



STATE OF MICHIGAN  
DEPARTMENT OF STATE  
LANSING

# **Driver License Appeals Practice Manual**

Michigan Department of State

2000 - 2001

# MICHIGAN DEPARTMENT OF STATE

## Driver License Appeals Practice Manual

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This practice manual is designed to assist defense attorneys, prosecutors, judges and other attorneys involved in driver license restoration appeals and other licensing matters. It includes case law summaries, statutory references, rules, forms, procedures, and other information useful to lawyers. If you have any questions concerning the materials in this manual, please feel free to contact the Driver License Appeal Division (517-373-1681) or the Compliance and Rules Division (517-373-8252).

## **I. Background**

The Michigan Department of State (the Department) is the government agency currently authorized to promote traffic safety and regulate driving activity through driver licensing requirements under the Michigan Vehicle Code (The code, 1949 PA 300, as amended; MCL 257.1 *et seq*). The vast majority of Michigan's licensed drivers does a good job driving and has no points on the historical driving record. However, when drivers are convicted of multiple traffic offenses, the Code requires the agency to conduct reexaminations to see if they should be allowed to continue driving on Michigan roads; or whether the risk they represent requires limitations on or removal of their driving privileges. As the number and severity of offenses increase, licensing actions become mandatory rather than discretionary.

After October 1, 1999, amendatory legislation removes certain licensing sanction powers from the courts and consolidates these powers in the Department. Oversight of driving activity and licensing is an administrative, regulatory function of the Executive Branch of state government. Historically, the courts and the Department have shared driver license suspension/revocation responsibilities. This proved cumbersome, since the Department had to override court actions if, for any reason, minimum sanctions were not applied.

In many states, all licensing sanctions are imposed by the Department of Motor Vehicles -- agencies similar to the Michigan Department of State. These actions are taken to ensure public safety and safe roads -- not to punish drivers.

Under the amended Codes, drivers will now have one, uniform, licensing action imposed for all offenses based upon the abstracts of conviction provided by the courts. Courts will still determine "responsibility" or "guilt". The Department has no discretion and is required to impose actions prescribed by the Legislature. (See Required Licensing Actions and Summaries - note the few exceptions.)

Driving privileges are an important, vested interest. Almost 90 percent of Michigan's 7,000,000 licensed drivers have no points on their records. But those few with large numbers of convictions are over-represented in crashes resulting in injuries and fatalities. Consider the following statistics:

- < As of 2000, one Michigan vehicle operator has 16 alcohol-related offenses on his record and another driver's license has been revoked through the year 2183 for multiple convictions of driving while his license was suspended/revoked.
- < The risk of a fatal collision increases exponentially with increases in bodily alcohol content (BAC), particularly for levels above .10. A driver with a BAC of .15 or greater has a fatal crash risk over 200 times greater than that of the average non-drinking driver.<sup>1</sup>

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<sup>1</sup>

The Hardcore Drinking Driver, H.M. Simpson & D.R. Mayhew, Traffic Injury Research Foundation, p. 21.

- < The average BAC at the time of arrest in Michigan is .16.<sup>2</sup>
- < 1,386 persons were killed and 124,601 persons were injured in 1999 on Michigan roads.<sup>3</sup>

Substantial resources of government are expended to remove poor drivers from the road. Officers arrest and enforce the laws; prosecutors charge and prosecute cases; and judges adjudicate them. Only those drivers with multiple offenses or serious violations are removed from the road. To merely concede that a person needs a license despite documenting his or her bad driving behavior, would defeat the entire traffic safety effort. That is why the Legislature reduced the appeal avenues available to habitual alcohol violators in 1992, and now to others as well. See Matheson v Secretary of State, 170 Mich App 216; 428 NW2d 31 (1988); lv den 432 Mich 879 (March 7, 1989), for an analysis of “punishment” versus “protection” responsibilities of government.

## II. Responsibilities for Traffic Safety within Department

### The Bureau of Driver Safety (BDS):

This year, the Secretary of State consolidated all driver safety programs within the agency, into the new Bureau of Driver Safety, thus recognizing the importance of driver safety programs within her administration. The Bureau includes the Driver Assessment Division (DA), the Driver Training and Testing Division, and the Driver License Appeal Division. The Bureau is also responsible for all traffic safety policies and represents the Secretary on boards and commissions such as the Michigan Truck Safety Commission.

Programs impacting driving licensing include the following:

### Driver Assessment Division (DA)

Driver Assessment employs approximately 40 analysts who are located around the state. The statutory authority for DA programs is found in MCL 257.310d and 320. The most common reason for conducting a §320 reexamination is when a driver accumulates 12 or more points within a two-year period. After a re-exam, the Department has the authority to restrict, suspend, or revoke a license.

The probation program conducted under §310d is based on the theory that good young drivers make good adult drivers. The program extends for three years where each unsafe driving event results in a Driver Assessment contact. The Department may warn, educate young drivers or place them on conditions, as well as impose licensing actions. The goal of the program is to keep young drivers on the road if they operate a vehicle safely, and to restrict driving or impose conditions at the times when they drive in an unsafe manner. For example, if a young driver is regularly speeding to after-school practice, his or her license would be restricted and he or she would not be allowed to drive to practice.

Besides the probationary driving program, legislation has also established a graduated driver license program to ensure young drivers obtain more time on the road with adult supervision, before licensure.<sup>4</sup> See **Appendix B** for an overview of the program.

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<sup>2</sup> See **Appendix A**.

<sup>3</sup> See **Appendix A**.

<sup>4</sup> MCL 257.310e. See **Appendix B**.

This separate program is important as teenagers comprise about 10 percent but represent 14 percent of all motor vehicle related deaths.<sup>5</sup>

### **Bureau of Branch Office Services (BBOS)**

BBOS representatives can deny licensure at the counter in the branch. Denial is imposed usually for a medical condition or other statutory reason for denial pursuant to MCL 257.303(1).

### **Driver License Appeal Division (DLAD):**

DLAD, which is responsible for overseeing the Department's driver license appeal program, employs 13 hearing officers who conduct hearings at 31 sites around the state, as authorized by MCL 257.322. The hearing officers conduct appeal hearings from driver assessment actions and branch office licensure denials. They also conduct implied consent hearings and habitual violator appeals. Approximately 20,000 hearings are scheduled annually. However, this number is expected to rise as persons revoked for any combination of two 625 crimes, under the new repeat offender laws will be eligible for a hearing after 10/1/00.

Implied consent hearings are conducted pursuant to MCL 257.625f. Persons who have allegedly refused to take a chemical test at the request of a law enforcement officer request these hearings.

Habitual violator appeals involve persons whose licenses have been revoked/denied for multiple substance abuse convictions in accordance with MCL 257.303.

DLAD recently implemented a videoconference hearing system to serve remote locations in the Upper Peninsula and in portions of the upper-Lower Peninsula. This allows the DLAD to conduct more hearings and more frequent hearings in these sites since travel is no longer required. Drivers still appear in person at a branch office near their residence, but they meet with the hearing officer via a television screen. Exhibits for videoconference hearings must be submitted in advance.

**Appendix C** includes three sets of Department administrative rules that affect drivers: Physical and Mental Standards for Drivers; Vision Standards; and newly promulgated DLAD General Hearing Rules.

## **III. Overview of Repeat Offender Legislation**

While the incidence of alcohol-related traffic fatalities has decreased in recent years (except for 1999 where fatalities rose by 19), clearly, our laws were not fully addressing the problem. And those of us in the criminal justice community all know that driving while suspended or revoked is commonplace and that little could be done about it under prior statutes.

On April 24, 1995, Governor Engler's Office wrote to Secretary Miller and Colonel Robinson soliciting their advice on how to effectively enforce the law against those caught driving with suspended and revoked licenses and for repeat alcohol offenders. The Governor's office pointed out that those driving with suspended or revoked licenses had reached "epidemic proportions" and that "meaningful enforcement of the traffic code depends on the criminal justice system's ability to effectively enforce licensing sanctions."

The Office of Highway Safety Planning, within the Department of State Police, organized a workshop featuring representatives from other states that had implemented new and innovative

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<sup>5</sup>

Insurance Institute for Highway Safety, 1999 Facts.

programs to confront this problem. A plan was developed for Michigan, but it languished for some time. Governor Engler first called for enactment of the package in his 1997 State of the State Address and then again in 1998.

With overwhelming support, a 20-bill package on repeat offenders was passed by the Legislature in 1998. These bills, 1998 P.A. 340 - 359, were signed into law on October 16, 1998. The Repeat Offender legislation represents a true bipartisan effort. The package amends various sections of the Vehicle Code, Penal Code, Felonious Driving Act, and the Natural Resources and Environmental Protections Act. The purpose of the amendment is to increase penalties and offer law enforcement, prosecutors, courts and the Secretary of State additional tools to combat the problem of repeat offenders -those individuals who continue to drive despite the fact that their driving privileges have been suspended or revoked, and those who repeatedly commit alcohol-related driving offenses. This is the first time Michigan has made a concerted effort to address the problem of persons who drive while suspended or revoked, and it is also the first time Michigan has called for vehicle sanctions against these offenders.

Throughout the legislative process, there was not a single vote of opposition. The package, most of which is effective October 1, 1999, embodies several major new concepts, which include: separating the offender from the vehicle; increasing repeat offender consequences; providing for uniform licensing actions and treatment; and establishing an evaluation process to determine the effectiveness of the new laws.

The package was so comprehensive that clean-up legislation was necessary even before October 1, 1999. Twelve bills, 1999 PAs 51, 53, 55 - 59, 73 - 77, also effective October 1, 1999, were signed into law in June of 1999.

Subsequently, 2000 PA 144 was passed, amending the Public Health Code to limit drug crime restrictions to those in the Vehicle Code.

In December, 1999, title and fingerprint legislation was passed, effective 12/28/99 and in March, 2000, 2000 PA 77 was passed removing notice of immobilization enhancement, effective 10/1/00.

In total, the repeat offender package included 44 bills.

Repeat offenders arrested on or after October 1, 1999, are subject to these new consequences and received a letter educating them about the new laws. Approximately 113,000 letters were mailed in September, 1999. In addition, a significant public relations campaign was launched to inform the public about the program as well. In June, 2000, the agency also mailed 62,000 letters to persons subject to registration-denial.

## Issues Included in the Repeat Offender\* Package

\*Repeat Offenders are those operators who continue to drive while their driver license is suspended/revoked/denied, or who commit multiple substance abuse-related offenses, i.e., OUIL, UBAC, OUID, OWI, OUIL/OWI/Death, OUIL/OWI/Injury, OUID, .04-CDL, Child Endangerment.

Any arrest on or after October 1, 1999 is subject to this new legislation<sup>6</sup>. Prior convictions and actions may enhance adverse consequences under this legislation. (See **Appendix D** for a section-by-section outline of the contents of the package and a matrix of consequences.) The law includes four major concepts: Limiting repeat offender access to vehicles; tougher consequences for repeat offenders, uniform licensing actions and mandatory treatment, and evaluation. This is accomplished as follows:

#### **A. Limiting Repeat Offender Access to Vehicles**

##### **Plate Confiscation**

On a second or more alcohol-related offense and on a third or more violation of a license suspension/revocation, law enforcement officers will confiscate vehicle plates and provide the vehicle with a paper plate that will terminate upon adjudication. This will place offenders on notice that they are involved in a serious offense and that their next offense will result in tougher sanctions. Paper plates may also discourage persons from failing to appear to resolve the DWLS/drunken driving charges.

##### **Vehicle Immobilization for Repeat Offenders**

Courts will order vehicle immobilization as follows:

- For a first alcohol-related conviction -- up to 180 days
- For a second alcohol-related conviction -- 90 -180 days
- For a third or more alcohol-related conviction -- 1 to 3 years
- For a second violation of a suspension/revocation -- up to 180 days
- For a third or fourth violation of a suspension/revocation -- 90 to 180 days
- For a fifth violation of a suspension/revocation -- 1 to 3 years

See **Appendix D** for two charts showing impact to vehicle ownership and one chart showing immobilization requirements.

##### **Ignition Interlock**

Under the package, the Department is required to place persons on an ignition interlock when they are granted restricted driving privileges from a license revocation as an habitual offender. The device must be installed for a minimum of one year.

##### **Offenders May Not Register Vehicles**

The new Repeat Offender package will stop operators with three or more alcohol-related convictions or four or more prior suspension/revocations under MCL 257.904 for driving while suspended, from renewing the registration on the offending vehicle or from registering a vehicle in their name. Offenders will be prohibited from selling the vehicle to a family member to avoid these new consequences. (Effective date June, 2000)

##### **Driving While Unlicensed**

Drivers who continue to drive while their licenses are suspended/revoked/denied are subject to new consequences, such as immobilization, plate confiscation, and registration denial. Persons with multiple Fail to Appear in Court (FAC) and Fail to Comply with Judgment (FCJ) suspensions are included. Persons receive "mandatory additional suspension/revocations" for committing moving violations while unlicensed. These will count as prior offenses for enhancement purposes.

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<sup>6</sup>

MCL 257.320e requires that the law in effect at the time of the violation be imposed.



## **B. Tougher Repeat Offender Consequences**

### **93-Day Misdemeanor**

Most misdemeanors in the package were increased from 90-day offenses to 93-day offenses for purposes of requiring fingerprints and improving criminal history records.

### **Use of Lesser Offense for Repeat Substance Abuse Offenders**

Lesser offenses will count as a prior for repeat alcohol offenders. This means that a person with a prior OWI conviction, who receives an OUIL today, will be treated as a repeat offender for purposes of license revocation. Even the offense of Zero Tolerance is included in this concept.

### **Any Combination of Three Substance Abuse Convictions is a Felony**

Any combination of three alcohol-related offenses within ten years is a felony under the new law. Prior to October 1, 1999, only three OUIL convictions support a felony level offense. Only one Zero Tolerance crime may be employed in this combination of offenses for a felony.

### **New Crimes**

DWLS/Death/Injury -- The law establishes two new crimes similar to those for Driving Under the Influence and Causing a Death or Injury. These are 15 and five-year felonies.

Child Endangerment Crime -- The package establishes a new crime for endangering youthful passengers while the operator is in violation of MCL 257.625.

ORV - OUIL/OWI/Death/Injury -- The law establishes two new crimes similar to OUIL/OWI/Death/Injury for offenses committed in an ORV.

Several crimes to enforce immobilization and ignition interlock requirements were also established. See **Appendix D** for a complete listing of new 93-day offenses.

### **Modification of Forfeiture Language**

The package revises the forfeiture language to create standards and ensure forfeiture is driven by the prosecutor; not the judge.

### **Meet New TEA-21 Requirements (Transportation Equity Act)**

Minimum jail and community service requirements for second and third drunk driving convictions were added to meet some of the new federal mandatory requirements. Michigan is the first state in the nation to meet these requirements.

### **Reimbursement to Local Units for Expenses**

The law allows courts to order persons convicted of alcohol-related offenses to reimburse local government for expenses including emergency response.

### **PBT Modification**

Preliminary breath testing admissibility is modified.

## **C. Uniform Licensing Actions and Mandatory Treatment**

### **Consolidate Licensing Actions in the Department of State**

The courts will continue to determine guilt for criminal charges, but licensing actions are imposed by the Department for all but a few exceptions<sup>7</sup>. These suspensions are set by statute. The law prior to October 1, 1999 provided minimum and maximum suspension periods. These statutes were amended to require sanctions equal to the minimum. Restricted privileges will be generic and reduce manual transactions. Restricted licenses will automatically be issued to drivers.

### **Limiting Appeals to a Review of the Record**

Prior to October 1, 1999 the law allowed some drivers to petition circuit court for hardship relief, while others were limited to a review of the record. The package limits many restoration appeals to circuit court to a review of the record and for determinations of law, thus establishing a uniform standard of appeal. The package also eliminates the “extension” requirement for mandatory additional actions making these actions run concurrently.

### **Hoebbel language**

A circuit judge held in three license appeal cases that the Department of State should use a “preponderance of the evidence” standard when conducting habitual offender appeal hearings. In addition, the court held that the burden of proof should be on the Department rather than the driver. The Court of Appeals recently decided Bunce v Secretary of State, 239 Mich App 204; 607 NW2d 372 (1999), which confirms that the level of, and the party with, the burden of proof and persuasion, was correctly interpreted in rules promulgated under the 1992 drunk driving reform legislation. In addition, MCL 257.303 was modified to clarify these requirements.

### **Mandatory Substance Abuse Treatment**

Substance abuse treatment is mandatory for a second or more, alcohol-related conviction.

### **FAC/FCJ**

The law clarifies that misdemeanors, as well as civil infractions may receive FAC/FCJ suspensions. In addition, persons committing a moving violation during a period of an FAC/FCJ suspension receive an additional 30-day suspension under MCL 257.904 (11). A first and only FAC/FCJ violation does not receive a suspension. These additional 30-day suspensions count as priors for purposes of plate confiscation and immobilization enhancement.

### **“Attempts”**

A general definition of “attempts” is included in the package so that “attempted crimes” are treated the same as completed crimes for purposes of punishment, licensing actions, and points.

### **CDL**

Federal requirements mandate commercial driver licenses be revoked for life upon conviction of certain serious crimes.

## **D. Evaluation of Process**

### **Revise Drunk Driving Audit**

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<sup>7</sup>

Drug crimes, No Proof of Insurance, watercraft, snowmobile, ORV actions, and Non-support.

Audit requirements were revised to include the new consequences and to remove the reporting of licensing actions by judge and require the Department of State to report this information.

#### **UMTRI Evaluation**

The Michigan Department of State Police is required to contract with the University of Michigan Transportation Research Institute to perform an evaluation of the effectiveness of the new legislation, three years after its implementation.

The effective Date is October 1, 1999 for everything but registration denial, which was effective June 1, 2000.

### **E. Clean-up Legislation**

#### **Highlights**

Modifications were made to several acts to minimize the unexpected impact of the increase to a 93-day misdemeanor. Local ordinances may be adopted for 93-day offenses, tickets may be issued for appropriate violations, and magistrates may continue to adjudicate appropriate cases.

Section 625g permits for persons who refuse or fail a chemical test are valid until acquittal, dismissal, or imposition of a licensing sanction rather than adjudication. This is because courts no longer impose licensing sanctions and this allows operators to continue to drive until an action is administered.

Co-owner language was added to clarify what vehicles would be immobilized or denied vehicle registration.

**Appendix D** includes a detailed summary of the clean-up legislation.

### **F. Criminal and Administrative Consequences**

Following is a chart which outlines criminal penalties and administrative consequences for all the alcohol-related and DWLS offenses.

# Criminal Sentencing/Administrative Consequences of HB 4247 (Alcohol Convictions)

Effective 09/30/03, removes references to "intoxicating liquor" and adds new definition for "alcoholic liquor" under 257.1d, Adds 257.625(8) to Alcohol Audit. Provides a one-year suspension for a first implied consent refusal, and a two-year suspension for a second or subsequent implied consent refusal within seven years.

	OUIL/UBAC §625(1) > .08 <b>Until Oct. 1, 2013</b> (a) OUIL/OUID (b) UBAC – Per Se	OWI §625(3)	Operating With Presence of Drugs 333.7212, 7214(a)(iv) (OWPD) §625(8)	OUIL/OWI Death/Injury §625(4) & (5)	Zero Tolerance §625(6) – (.02 < .08) <b>.08 Until Oct. 1, 2013</b>	Child Endangerment §625(7) In violation of 625 (1), (3), (4), (5), or (8)	.04 - < .CDL §625m(1) – (.04 < .08) <b>.08 Until Oct. 1, 2013</b>
1st Offense (no prior 625 crime)	Misdemeanor  Fine/Jail/Comm Svc: 1 or more of following: Up to 93 days jail; \$100 -\$500 fine or; up to 360 hours comm svc.  Licensing: 30/150 susp/rest 6 points Court-ordered Ignition Interlock permissive. 625(24)  Plate conf: None  Immob: Permissive up to 180 days  Reg Deny: None  Forf: None	Misdemeanor  Fine/Jail/Comm Svc: 1 or more of following: Up to 93 days jail; \$300 fine or; up to 360 hours comm svc.  Licensing: 90-day rest 180-day rest w/OWID 4 points  Plate conf: None  Immob: Permissive up to 180 days  Reg Deny: None  Forf: None	Misdemeanor  Fine/Jail/Comm Svc: 1 or more of following: Up to 93 days jail; \$100 -\$500 fine or; up to 360 hours comm svc.  Licensing: 30/150 susp/rest 6 points Court-ordered Ignition Interlock permissive. 625(24)  Plate conf: None  Immob: Permissive up to 180 days  Reg Deny: None  Forf: None	Felony  Fine/Jail/Comm Svc: <u>Death</u> - prison up to 15 years OR \$2,500 - \$10,000 fine, or both. <u>Injury</u> - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. <u>Emer. Responder</u> <u>Death</u> - prison up to 20 years OR \$2,500 to \$10,000 fine, or both.  Licensing: minimum 1 year revocation/denial 6 points  Plate conf: Required  Immob: Required up to 180 days  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: Up to \$250 fine OR up to 360 hours comm svc, or both.  Licensing: 30 day rest. 4 points  Plate conf: None  Immob: None  Reg Deny: None  Forf: None	Misdemeanor  Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1- year jail; 30-90 days comm svc.  Licensing: 90/90 susp./rest. 6 points  Plate conf: None  Immob: Permissive up to 180 days  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: Up to \$300 fine OR up to 93 days jail, or both.  Licensing: CDL - 1yr susp, OPR 90 day rest., HAZ - 3 yr susp. 0 points  Plate conf: None  Immob: Permissive up to 180 days  Reg Deny: None  Forf: None
2nd Offense or any prior 625 crime within 7 years	Misdemeanor  Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm svc.  Licensing: minimum 1 year revocation/denial  Plate conf: Required  Immob: Required 90 to 180 days unless forfeited  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm svc.  Licensing: minimum 1 year revocation/denial  Plate conf: Required  Immob: Required 90 to 180 days unless forfeited  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: \$200 - \$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm svc.  Licensing: minimum 1 year rev/denial  Plate conf: Required  Immob: Required 90 to 180 days unless forfeited  Reg Deny: None  Forf: Permissive	Felony  Fine/Jail/Comm Svc: <u>Death</u> - prison up to 15 years OR \$2,500 - \$10,000 fine OR both. <u>Injury</u> - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. <u>Emergency Responder</u> <u>Death</u> - prison up to 20 years OR \$2,500 to \$10,000 fine, or both.  Licensing: minimum 5 year revocation/denial  Plate conf: Required  Immob: Required 90 to 180 days unless forfeited  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: One or more of the following: up to 60 days comm svc; up to \$500 fine; up to 93 days jail.  Licensing: 90 day susp OR if prior §625 then minimum 1 year revocation/denial  Plate conf: None  Immob: None  Reg Deny: None  Forf: None	Felony  Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1-year jail AND 60- 180 days comm svc.  Licensing: minimum 1 year revocation/denial  Plate conf: Required  Immob: Required 90 to 180 days unless forfeited  Reg Deny: None  Forf: Permissive	Misdemeanor  Fine/Jail/Comm Svc: Up to \$1,000 fine OR up to 1-year prison, or both.  Licensing: CDL - minimum 10yr rev, OPR 1yr rev/den.  Plate conf: Required  Immob: Required 90 to 180 days  Reg Deny: None  Forf: None
3rd Offense or 2 prior 625 crimes within 10 years	Felony  Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1-year jail AND 60-180 days comm svc.  Licensing: minimum 1 to 5 year rev/denial  Plate conf: Required  Immob: Required 1 to 3 years unless forfeited  Reg Deny: Required  Forf: Permissive	Felony  Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1-year jail AND 60-180 days comm svc.  Licensing: min. 1 to 5 year rev/den  Plate conf: Required  Immob: Required 1 to 3 years unless forfeited  Reg Deny: Required  Forf: Permissive	Felony  Fine/Jail/Comm Svc: \$500 - \$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1-year jail AND 60-180 days comm svc.  Licensing: minimum 1 to 5 year rev/den  Plate conf: Required  Immob: Required 1 to 3 years unless forfeited  Reg Deny: Required  Forf: Permissive	Felony  Fine/Jail/Comm Svc: <u>Death</u> - prison up to 15 years OR \$2,500 - \$10,000 fine OR both. <u>Injury</u> - prison up to 5 years OR \$1,000 - \$5,000 fine OR both. <u>Emer. Responder</u> <u>Death</u> - prison up to 20 years OR \$2,500 to \$10,000 fine, or both.  Licensing: minimum 1 to 5 year revocation/denial  Plate conf: Required  Immob: Required 1 to 3 years unless forfeited  Reg Deny: Required  Forf: Permissive		Endangerment - Zero Tolerance w/occupant <16 Misdemeanor  Fine/Jail/Comm Svc: 1st -One or more of the following: up to 60 days comm svc; up to \$500 fine; up to 93 days jail.  2nd - \$200 - \$1,000 fine AND one or more of the following: 5 days to 1- year jail; 30-90 days comm svc.  Licensing: 1st - 90/90 susp./rest. 2nd - revoke  Plate conf: See 1st, 2nd offense Immob: See 1st & 2nd  Reg Deny: None  Forf: Permissive	Felony  Fine/Jail/Comm Svc: \$500 - \$5,000 fine and either of the following: prison from 1 - 5 years; probation with 30 days to 1 year jail AND 60-180 days comm svc.  Licensing: CDL - rev for LIFE--if prior approval, OPR- minimum 5 yr den/rev  Plate conf: Required  Immob: Required 1 to 3 years  Reg Deny: Required Forf: None

HB 4247 changes in bold. (As approved by the Senate, version S-2)

## Criminal Sentencing/Administrative Consequences - Repeat Offender (Driving While Suspended Convictions)

	DWLS §904(1)	Knowing Allowed Someone to DWLS §904(2)	DWLS Causing Death §904(4)	DWLS Causing Serious Injury §904(5)	Knowingly Allowed Someone to DWLS Causing Death §904(7)	Knowingly Allowed Someone to DWLS Causing Serious Injury §904(7)
1st Offense (no *priors)	<b>Misdemeanor</b>  <b>Fine/Jail/Comm Svc:</b> Up to 93 days jail; up to \$500 fine, or both.  <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12)  <b>Plate conf:</b> None. (Cancel upon notice by officer)  <b>Immob:</b> None  <b>Reg Deny:</b> None  <b>Forf:</b> None	<b>Misdemeanor</b>  <b>Fine/Jail/Comm Svc:</b> Up to 93 days jail; up to \$500 fine, or both.  <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12)  <b>Plate conf:</b> None. (Cancel upon notice by officer)  <b>Immob:</b> None  <b>Reg Deny:</b> None  <b>Forf:</b> None	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 15 years; \$2,500 - \$10,000 fine, or both.  <b>Licensing:</b> minimum 1 year revocation/denial  <b>Plate conf:</b> Required  <b>Immob:</b> Required up to 180 days, unless forfeited.  <b>Reg Deny:</b> None  <b>Forf:</b> Permissive	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 5 years; \$1,000 - \$5,000 fine, or both.  <b>Licensing:</b> minimum 1 year revocation/denial  <b>Plate conf:</b> Required  <b>Immob:</b> Required up to 180 days, unless forfeited.  <b>Reg Deny:</b> None  <b>Forf:</b> Permissive	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 5 years; \$1,000 - \$5,000 fine, or both.  <b>Licensing:</b> None  <b>Plate conf:</b> None  <b>Immob:</b> None  <b>Reg Deny:</b> None  <b>Forf:</b> None	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 2 years; \$1,000 - \$5,000 fine, or both.  <b>Licensing:</b> None  <b>Plate conf:</b> None  <b>Immob:</b> None  <b>Reg Deny:</b> None  <b>Forf:</b> None
2nd Offense or 1 *prior 904 susp within 7 years	<b>Misdemeanor</b>  <b>Fine/Jail/Comm Svc:</b> Up to 1 year jail; up to \$1,000 fine, or both.  <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12)  <b>Plate conf:</b> None. (Cancel upon notice by officer)  <b>Immob:</b> Permissive up to 180 days  <b>Reg Deny:</b> None  <b>Forf:</b> None	<b>Misdemeanor</b>  <b>Fine/Jail/Comm Svc:</b> to 1 year jail; up to \$1,000 fine, or both.  <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12)  <b>Plate conf:</b> None. (Cancel upon notice by officer)  <b>Immob:</b> Permissive up to 180 days  <b>Reg Deny:</b> None  <b>Forf:</b> None	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 15 years; \$2,500 - \$10,000 fine, or both.  <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required  <b>Immob:</b> Required up to 180 days, unless forfeited.  <b>Reg Deny:</b> None  <b>Forf:</b> Permissive	<b>Felony</b>  <b>Fine/Jail/Comm Svc:</b> Prison up to 5 years; \$1,000 - \$5,000 fine, or both.  <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required  <b>Immob:</b> Required up to 180 days, unless forfeited.  <b>Reg Deny:</b> None  <b>Forf:</b> Permissive	Same as 1st offense.	Same as 1st offense.
3rd Offense or 2 *prior 904 susp within 7 years	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days  <b>Reg Deny:</b> None <b>Forf:</b> None	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days  <b>Reg Deny:</b> None <b>Forf:</b> None	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days, unless forfeited. <b>Reg Deny:</b> None <b>Forf:</b> Permissive	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days, unless forfeited. <b>Reg Deny:</b> None <b>Forf:</b> Permissive	Same as 1st offense.	Same as 1st offense.
4th Offense or 3 *prior 904 susp within 7 years	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days  <b>Reg Deny:</b> Required <b>Forf:</b> None	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days  <b>Reg Deny:</b> Required <b>Forf:</b> None	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days, unless forfeited. <b>Reg Deny:</b> Required <b>Forf:</b> Permissive	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 90 to 180 days, unless forfeited. <b>Reg Deny:</b> Required <b>Forf:</b> Permissive		
5th Offense or 4 *prior 904 susp within 7 years	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 1-3 years  <b>Reg Deny:</b> Required <b>Forf:</b> None	<b>Misdemeanor</b> Criminal - Same. <b>Licensing:</b> Mandatory additional under §904(10), (11) and (12) <b>Plate conf:</b> Required <b>Immob:</b> 1-3 years  <b>Reg Deny:</b> Required <b>Forf:</b> None	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 1-3 years, unless forfeited. <b>Reg Deny:</b> Required <b>Forf:</b> Permissive	<b>Felony</b> Criminal - Same. <b>Licensing:</b> minimum 5 year revocation/denial  <b>Plate conf:</b> Required <b>Immob:</b> 1-3 years, unless forfeited. <b>Reg Deny:</b> Required <b>Forf:</b> Permissive		

\*For purposes of immobilization, priors are defined as prior mandatory additional suspensions/revocations imposed pursuant to §904(10), (11) or (12); not prior convictions of DWLS.

Prepared by the Michigan Department of State

### **Glossary of Often Used Terms**

Plate Confiscation:	At time of arrest for a multiple offender, officers confiscate the vehicle's metal plate regardless of ownership, destroy the plate, and replace it with a paper plate that expires when the case is finally decided.
Immobilization:	Immobilization of the offending vehicle is court-ordered for repeat offenders. Drivers must have immobilization devices installed at their expense and show proof of installation to the court. Technologies include: ignition interlock, steering column club, wheel boot, or driver tether. Immobilization is ordered if offender owns, co-owns, leases or co-leases the vehicle.
Vehicle Forfeiture:	The court orders the vehicle sold. Monies from the sale will be distributed according to the priorities defined by statute, first to pay secured interests and then to others.
Registration Denial:	Offenders cannot register a vehicle in which they hold an ownership interest, until they are relicensed. This applies only to repeat offenders with three or more alcohol convictions or four or more driving while suspended violations.
Ignition Interlock:	This device prevents the vehicle from being started until the person passes a breath test. If the driver has any measurable bodily alcohol content, the car will not start. Random tests are required while operating the vehicle. These devices are mandatory for repeat offenders who are granted restricted licenses after serving a period of revocation. Ignition interlocks are installed at the offender's expense.
BAC:	Bodily Alcohol Content -- This information is obtained by a blood or breath test.
Revocation:	This means the permanent loss of the driver license and privilege to operate a motor vehicle. After the minimum period of revocation, (1 year or 5 years) drivers may re-apply for a license and try to prove they will be safe drivers in the future. The agency may deny the license or grant a restricted license.
Suspension:	This means the temporary loss of a driver license for an established period of time. Upon expiration of the suspension period and payment of a \$125 reinstatement fee, the license will be returned.
Restrictions:	This means limited driving privileges such as driving to and from work.

## **IV. Repeat Offender Procedures**

### **Law Enforcement - Stop and Arrest**

Status Check, Arrest, and Issuance of Paper Plate:

If an operator has one prior alcohol conviction or two prior suspension/revocation violations plate confiscation is required if an officer is arresting the operator for a subsequent offense. An officer=s LEIN check for drivers 35;1 and 35;2 and for plates 11;\_ and 13;\_ will provide the information to determine whether confiscation is required. The LEIN response shows the number of prior 625 crimes and 904 actions for this driver. Courts may also see this status line on the 42;7 and 8s. Officers are required to take plates from these offending vehicles regardless of ownership.

The SOS status indicates as follows:

#\_\_ prior alcohol violation (625) or Murder, Manslaughter, Neg Hom with a vehicle

#\_\_ prior additional suspensions/revocations [904(10), (11), (12)].

“If arresting for 2nd alcohol or more alcohol [625] or DWLS (during any type of susp/rev) with 2 or more prior mandatory additional suspension/revocations, plate confiscation is required. Destroy the plate and issue a paper plate. Do not confiscate, dealer, manufacturer, out-of-state, rental, trailer, tribal, US government, or apportioned (IRP) plates. MCL 257.904c”

If officers run a LEIN check on a car already ordered immobilized, the 53; will show that the vehicle is immobilized with from and through dates and the driver license number of the offender. It will also show if a vehicle is subject to a paper plate.

The officer completes the new three-part form, places the first copy in the rear window of vehicle, and destroys the metal plate. The second copy is forwarded to the prosecutor/court with the officers report, and the third copy is forwarded to the LEIN operator and then subsequently, to the officer’s file.

LEIN Entry and Paper Plate Prohibitions:

Plate confiscation information is entered into the LEIN immediately to prevent operators from going to the branch to obtain new plates. If arresting for drunk driving, the officer issues the new DI-93 and DI-177 which were modified to include notice that the permit is now valid until the driver receives a licensing action from the Department or until the case results in an acquittal or dismissal.

While the paper plate is on the offending vehicle:

- A licensed and sober driver may drive on the paper plate without restrictions.
- The paper plate expires on the same date as the underlying metal plate and must be renewed for issuance of another paper plate.
- The vehicle may be sold to anyone but a family member without a court order.
- The operator may purchase and register a new vehicle in his/her name.
- The paper plate is valid until the criminal case is finally adjudicated.

### **The Prosecutor – Enhancement**

Law enforcement officers submit their reports, which include a copy of the temporary paper plate, to the prosecutor. After October 1, 2000, the prosecutor need no longer give notice if

seeking immobilization, 2000 PA 77. The legislation also established new crimes that may be charged by prosecutors.

### **The Court – Immobilization**

#### **Paper Plate Clearance:**

Upon adjudication, drivers may take a form, Notice of Adjudication (NOA) to any branch office to obtain a metal plate. If the person was convicted of a §625 crime, the §625g permit will continue in effect until the Department imposes a licensing action, or the person is acquitted or the case is dismissed. Courts may still issue Court Ordered Restricted Driver License (CORDL) for crimes with arrests prior to October 1, 1999 or for drug crimes.

Once the case is adjudicated, abstracts should be submitted to the Department. Sentencing documents should follow.

#### **Immobilization:**

If a driver is convicted of a §625 crime or an offense resulting in a §904 licensing action, courts may be required to order vehicle immobilization. The statute requires that periods of immobilization start after imprisonment. Immobilization is permissive for first offenses and mandatory as more priors are accumulated. See **Appendix D**.

If the driver is not an owner of the vehicle and an owner did not knowingly permit the driver to operate while under influence or DWLS, i.e., they are an "innocent owner", no immobilization/forfeiture may be ordered. However, prosecutors may attempt to prove that the owner "knowingly allowed" the offender to operate in such a manner and then the vehicle would be ordered immobilized. Co-owners cannot be considered "innocent owners" for purposes of avoiding immobilization.

Immobilization is privatized. Courts must approve the method of immobilization. These methods may include a boot, steering column lock, or driver tether. (A tether prevents only the offender from operating the vehicle.)

Courts may order drivers to obtain proof of immobilization within a time period such as two weeks prior to submitting the sentencing-abstract information to the Department. Courts may use sanctions such as contempt, probation violations, etc., to enforce these orders.

When officers stop vehicles that are subject to immobilization, the plate status shows that the vehicle was ordered immobilized, with from and through dates, and the driver license number (DLN) of the offender. Tether technology requires the Department to include the DLN in the LEIN response as others may be able to legally drive an immobilized vehicle. Officers should verify the method of immobilization when enforcing these laws. Officers may impound the vehicle if it is being illegally operated during a period of immobilization.

### **The Secretary of State-Registration-Denial**

If persons' licenses are currently suspended or revoked for three or more alcohol-related convictions or for four or more driving while suspended/revoked violations, they are subject to registration-denial. Neither they, nor any co-owner may register the vehicle until the offender is re-licensed. Persons who are subject to registration-denial may only transfer or assign their vehicles to a person exempt from Use Tax Act requirements with a court order, MCL 257.233(4). A court order may be sought, using a Department of State form. See State Court



Administrators Office (SCAO) orders in **Appendix J**. The agency is also responsible for imposing licensing sanctions. See V.

## **V. Mandatory Licensing Actions**

### **Types of Licensing Actions**

Licensing actions range from restrictions to revocations. The most serious action is a revocation, defined in MCL 257.52 as the termination of the operator's license and privilege to operate a motor vehicle. The driver is only eligible to reapply to the Department for license restoration after the expiration of one year following a first revocation, and after the expiration of five years for a subsequent revocation within seven years of a prior revocation. There is no guarantee that the license will be returned after the minimum period of revocation. The pivotal issue is whether the person can be considered a safe driver based upon documentary evidence and testimony.

A suspension is for a definite period and carries a “from” and “through” date. When the “through” date is reached, the driver merely needs to appear at a branch office and pay the reinstatement fee for relicensure.<sup>8</sup> (That is, if no additional violations occur during the period of suspension.<sup>9</sup>)

A restricted license allows limited driving privileges. Since October 1, 1999, these privileges are generated automatically pursuant to MCL 257.319, based upon receipt of conviction information. The Department exercises no discretion but will issue the sanction as prescribed by the Legislature. Restrictions include all those authorized by law. It is important that operators carry proof of destination and hours when operating a vehicle. Proof is required so that law enforcement officers can insure compliance with the restrictions authorized. Restrictions include:

- (a) In the course of the person’s employment or occupation.
- (b) To and from any combination of the following:
  - a. The person’s residence.
  - b. The person’s work location.
  - c. An alcohol or drug education or treatment program as ordered by the court.
  - d. The court-ordered probation department.
  - e. A court-ordered community service program.
  - f. An educational institution at which the person is enrolled as a student.
  - g. A place of regularly occurring medical treatment for a serious condition for the person or a member of the person’s household or immediate family.

Section 319 suspensions will be for a definite period of time with “from” and “through” dates. When a “through” date is reached, the driver need merely pay the reinstatement fee to obtain a full license, if there are no other open licensing actions. If not fee is paid, the driver is on an “invalid” license status.

However, restrictions or suspensions may also be “indefinite” in nature, and will not terminate until approved for relicensure by the Department or a court. For example, if an indefinite

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<sup>8</sup> This reinstatement fee required by MCL 257.320e is different from the reinstatement fee collected by the courts. The fees, once collected, are distributed to several agencies. "Suspension" is defined in MCL 257.66.

<sup>9</sup> MCL 257.904(2).

suspension is imposed by a Department analyst for a medical reason, the driver must submit a favorable medical statement for evaluation before relicensure is authorized.

Licensing denial is generally imposed by the branch office. When a license is denied, the person does not have a license and is not eligible for renewal. Reasons for denial could be the inability to pass a road test or because of some health problem which prevents the person from operating a motor vehicle safely.

Department analysts may also impose terms and conditions on licensure. These are generally a part of the probationary program. For example, the number of passengers in a vehicle operated by a young driver may be limited.

### **Trial-Court Ordered Licensing Sanctions**

Courts are no longer required to impose licensing actions **except** for drug crimes, no proof of insurance, non-support, watercraft, snowmobiles, ORVs, and for offenses with arrest dates prior to October 1, 1999. All licensing sanctions are imposed by the Department based upon receipt of a court conviction. It is very important that abstracts of conviction be submitted to the Department within 14-days of plea to reduce delays in imposing licensing actions.

Courts submit conviction and sentence information to the Department on abstracts of conviction. These are often submitted electronically. Amended sentence information must be submitted to the Department on an amended abstract form. Licensing sanctions which are part of the terms of probation are not placed on driving records. Civil restoration appeals should be submitted on State Court Administrator form orders. (See Restoration Appeal Process.)

Determination of how prior drunk driving convictions are counted for court-ordered licensing actions versus administrative actions, was addressed in a recent decision, *People v Vezina*, 217 Mich App 148; 550 NW2d 613 (1996). *Vezina* clarifies that a court-ordered enhancement for a subsequent drunk driving conviction is based upon the violation date rather than the conviction date while the administrative action is based upon the conviction date of the subsequent drunk driving event.

### **Department Licensing Actions and Authority**

After October 1, 1999, “attempt” language was consolidated into one section, MCL 257.204b. The section provides that all attempted offenses are to be treated as though completed for assessing points and imposing licensing sanctions and by courts for imposing punishment.

If a person receives two convictions from a single stop or arrest, these are treated at “same incident” and only the higher set of points is assessed<sup>10</sup>. In addition, MCL 257.319(18) carries “same incident” language and only one licensing action is imposed.

Some offenses are “non-moving” violations and do not result in mandatory actions pursuant to MCL 257.904 or assessment of points pursuant to MCL 257.320a. (Some offenses do not carry points, however, they do generate mandatory additional actions pursuant to MCL 257.904.)

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<sup>10</sup>

MCL 257.320(5).

Non-moving violations include:

Open Intoxicants – Passenger Transport/Possess Alcohol - Passenger Preliminary Breath Test Refusal in CMV Preliminary Breath Test Refusal in Non-CMV Person < 21 Used Fraudulent ID to Purchase Liquor Persons < 21 Purchase/Consume/Possess Liquor Unlawful Use or Display of License Altered Driver License Fail to Report Accident 2 or more Unpaid Handicapper Parking Tickets 6 or more Unpaid Parking Tickets	Fraud in Obtaining License Allowed Person to Drive in Viol of Vehicle Code Gave False Info to Police Officer False Cert Under Vehicle Code (Perjury) Alter/Forge/Falsify Vehicle Document or Plate Drug Crime Fraudulent Change of Address Registration/Plate Violation Ignition Interlock and Immobilization Violations Enforcement crimes
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Following is a chart summarizing sections of the Vehicle Code which requires licensing actions by the Department of State entitled, “S.O.S. Licensing Action Authority”.

**REQUIRED SOS LICENSING ACTION AUTHORITY (MCL 257 . . .) - Page 1**

Revoked/Denied §303	Mandatory Suspension §319
<p>(1) SOS shall not issue license to: (a) &amp; (b) persons less than 18 years of age, except as otherwise provided.</p> <p>(c) a driver whose license is suspended</p> <p>(d) a person convicted under §625(4) or (5), §904 (4) or (5) or §653a(4)</p> <p>(e) a person convicted of Neg Hom, Manslaughter, Murder resulting from operation of motor vehicle</p> <p>(f) habitual alcohol violator</p> <p>(g) mental/physical disability or disease-no reasonable/ordinary control</p> <p>(h) no understanding of English highway signs</p> <p>(I) habitual reckless</p> <p>(j) habitual criminal</p> <p>(k) unable to pass knowledge/skill test</p> <p>(l) 2 convictions 3 years prior to application</p> <p>(m) a non-resident</p> <p>(n) a person who would be suspended under §321a</p> <p>(o) a person who would be suspended under §319, 324, or 904</p> <p>(p) a person who would be suspended under §319e</p> <p>(q) a person who would be suspended under §624a, §624b, MCL 436.1703(1)</p> <p>(r) person convicted of violation of MCL 257.602a(4) or (5) or MCL 750.479a(4) or (5)</p> <p>(2) SOS shall revoke for: (a) any combination of 2 w/in 7 years of reckless or §653a(3)</p> <p>(b) 2 felony convictions with vehicle w/1 7 years</p> <p>(c) any combination of 2 w/in 7 years for any of the following or a combination of 1 conviction for a violation of §625(6) and 1 conviction for any of the following w/1 7 years: (i) §625(1), (3), (4), (5), or (7), (8) §904 (4) or (5), or §653a(4) (ii) former §625(1) or (2) or former §625b (iii) §625m (iv) Neg Hom, Mansl, Murder with vehicle</p> <p>(d) one conviction §625(4) or (5), §904 (4) or (5), or §653a(4)</p> <p>(e) one conviction Neg Hom, Mansl, or Murder with Vehicle</p> <p>(f) any combination of 3 w/in 10 years for any of the following or a combination of 1 conviction for a violation of §625(6) and 2 convictions for any of the following w/in 10 years: (i) §625(1), (3), (4), or (5) or (7), (8), §904 (4) or (5), or §653a(4) (ii) former §625(1) or (2) or former 625b (iii) §625m (iv) Neg Hom, Mansl, Murder with vehicle</p> <p>(g) person convicted of violation of MCL 257.602a(4) or (5) or MCL 750.479a(4) or (5)</p> <p>(3) Do this notwithstanding a court order</p> <p>(4) SOS shall not issue to person denied/revoked under §303(1)(d), (e), (f), (I), (j), or (r) until both: (a) the later of the following: (i) minimum 1 year; (ii) minimum 5 years for 2nd revocation w/in 7 years of prior person rebuts by clear and convincing evidence</p> <p>(b) meets requirements of the Department</p> <p>(5) Same incident language</p> <p>(6) Definition of "Felony Auto Used"</p>	<p>(1) SOS shall suspend for Michigan, out of state, or local ordinance conviction</p> <p>(2) SOS shall suspend for 1 year for: (a) alter/forging vehicle document-- §257 (b) UDAA-- MCL 750.413 (c) felonious driving-- MCL 752.191 (d) leaving scene of an accident resulting in death or serious injury-- §617 (e) felony in which a motor vehicle was used (f) Fleeing and Eluding -- MCL 257.602a(2) or (3) or MCL 750.479a(2) or (3)</p> <p>(3) SOS shall suspend for 90 days for any of the following crimes : (a) leaving scene of accident resulting in serious injury-- §617a (b) reckless driving-- §626 or emergency responder injury -- §653a(3) (c) malicious destruction-- §382(1)(b),(c),or (d) (d) under 21 fraudulent use of ID--MCL436.1703(2)</p> <p>(4) SOS shall suspend for 30 days for malicious destruction under MCL 750.382(1)(a)</p> <p>(5) For perjury to SOS, suspend as follows: (a) no priors w/in 7 years- 90 day suspension (b) 1 or more priors w/in 7 years- 1 year susp.</p> <p>(6) For joy riding-- MCL 750.414, suspend as follows: (a) no priors w/in 7 years- 90 day suspension (b) 1 or more priors w/in 7 years- 1 year susp.</p> <p>(7) For a violation of §624a or 624b or MCL 436.1703(1), suspend as follows: (a) 1 prior in this subsection or §33b(1)- 30 day susp/60 day rest (b) 2 or more priors- 60 day susp/305 day rest</p> <p>(8) For a violation of §625 or 625m, suspend as follows: (a) §625(1)- 30 day susp/150 day rest (b) §625(3)- 90 day restricted; controlled substance-180 day restricted (c) §625(6)- 30 day restricted (d) §625(6) with 1 or more priors- 90 day restricted (e) §625(7)- 90 day susp/90 day rest (f) §625m- 90 day restricted (g) §625(8)- 30 day susp/150 day restricted</p> <p>(9) For fraudulent change of address: (a) no priors- 180 day suspension (b) subsequent- revocation</p> <p>(10) For fraudulent change of address- MCL 257.315(4) (a) no priors- 180 day suspension (b) subsequent - revocation</p> <p>(11) Do this notwithstanding court order</p> <p>(12) Same incident language</p> <p>(13) SOS may waive suspension or grant restrictions if served out-of-state</p> <p>(14) SOS shall not issue a restricted license unless it is authorized under this section and the person is eligible</p> <p>(15) No restricted license to transport hazardous material</p> <p>(16) A restricted license permits driving as follows: (a) "MAY DRIVE TO AND FROM RESIDENCE AND PLACE OF EMPLOYMENT AND IN THE COURSE OF EMPLOYMENT, TO ABUSE TREATMENT PROGRAM AND/OR SUPPORT GROUP MEETINGS, TO REGULARLY SCHEDULED TREATMENT FOR SERIOUS MEDICAL CONDITION FOR THE DRIVER, A MEMBER OF THE PERSON'S HOUSEHOLD OR IMMEDIATE FAMILY, TO COURT PROBATION OFFICE AND COMMUNITY SERVICE AND EDUCATIONAL INSTITUTION, MUST CARRY PROOF OF DESTINATIONS AND HOURS"</p> <p>(17) Person shall carry proof of destination and hours and display upon request</p> <p>(18) Definition of "prior"</p> <p>(19) Only 1 violation of §625(6) may be used as a prior conviction</p> <p>(20) Same incident language</p>

Chart Updated October, 2004

REQUIRED SOS LICENSING ACTION AUTHORITY - Page 2		
Probationary Drivers §310d	Driver Improvement §320	Illegal Use of License §324
1st conviction = correspondence letter 2nd conviction = self-study re-exam 3rd conviction = warning letter 4th conviction = diagnostic re-exam 5th conviction = probationary re-exam 3-year program of which the last 10 months must be violation-free or the probationary period is extended until 10 months are completed	(1) One of the below and (2) (a) incompetent (infirmary/disability) (b) one fatal accident (c) 3 hazardous crashes (d) 12 points/2 years (e) violated restrictions, terms, or conditions (2) Good cause	Unlawful use of license  1st = 90 days 2nd within 7 years = 1 year
Implied Consent §625f	Mandatory Additional §904	Drug Law §319e
1st IC suspension = 1 year  2 <sup>nd</sup> IC suspension within 7 years = 2 years	(10) Upon receiving record of a person's conviction for unlawful operation of a motor vehicle while license is susp/rev, impose an additional like period of susp/rev  (11) Upon receiving record of a person's conviction for unlawful operation of a motor vehicle while license is indefinitely suspended or whose application for a license has been denied, impose a 30-day period of susp/den  (12) Upon receiving record of conviction for unlawful operation of a commercial motor vehicle while designation is suspended pursuant to §319a or 319b, or revoked, impose an additional like period of susp/rev	(1) Suspend for conviction, attempt, conspiracy or violation of part 74 or §17766a of Health Code per court order  (2) Suspend for out-of-state conviction or federal drug act violation for: (a) 6 months if no priors (b) 1 year if 1 prior within 7 years  (3) SOS may waive or grant restrictions if served 1 year imprisonment or licensing action  (4) Not applicable if sentenced to life imprisonment or over 1 year
Commercial Driver License (CDL) §312f, 319a, 319b		
§319a SOS shall suspend a CDL as required in §319b. (1) §319b(1) Suspend or revoke a CDL for convictions or IC refusal for: (a) 60 days susp for 2 serious traffic violations while in CMV from separate incidents within 36 months (b) 120 days for 3 serious traffic violations in CMV from separate incidents within 36 months (c) 1 year if convicted of: (i) Viol of §625(1), (3), (4), (5), (6), (7) or (8), §625m in CMV (ii) Leaving scene of accident in CMV (iii) Felony in which CMV was used (iv) IC refusal in CMV (v) 6-point violation in CMV (d) Suspend 3-years if (c)(i)-(v) in CMV with hazardous material (e) Revoke for 10 years until approved if convicted of: (i) Any combination of 2 viols in §625(1), (3), (4), (5), (6), (7) or (8), §625m in CMV (ii) 2 viols of leaving scene of accident in CMV (iii) 2 viols of felony with CMV (iv) 2 IC's in CMV (v) 2- 6 point violations in CMV (vi) 2 viols of (I),(ii),(iii), (iv), or (v) arising from separate incidents	(f) Revoke for life if convicted of: (i) 1 viol of felony in CMV with drug mfg/distribution (ii) Conviction of any offense in (c) or (d) after having been approved for an issuance under (e)  (2) Suspend CDL for a violation of §319d(4) or §319f out of service or disqualified  (3) Definition of "felony", "serious traffic violation"  (4) Bond forfeiture is considered a conviction  (5) Do this "notwithstanding" other action or court order  (6) Only consider violations after 1/1/90	<b>§312f APPLICATION DENIALS - CDL</b>  (4) SOS shall not issue CDL to: (a) Person suspended, revoked, other than for §321a, within 36 months preceding application unless medical or failure to appear at re-exam  (b) Applicant convicted of 6-point viol in 24 months preceding application or §625(3) in CDL  (c) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied  (d) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied within 36 months of application if licensed in Michigan  (e) Applicant would have been denied for §319b  (f) Disqualified under Title XII or CDL suspended, revoked, denied or canceled within 36 months of application

Chart Updated October 4, 2004

**License Actions Imposed By Secretary of State**

Offense Code	Offense MCL 257.319	Repeat Offender Licensing Actions	
Substance Abuse Offenses			
1200	OWI  §625(3)	(1) (2) (3)	90 rest denial/revocation denial/revocation
1220	OWID  §625(3)	(1)	180 rest
1000 1010 1100 1110/1020	OUIL  §625(1) UBAC  §625(1) OUID  §625(1) Combined OUIL/UBAC/OUID	(1) (2)	30 susp/150 rest denial/revocation
1030 (1120) 1035	OUIL/OWI - Death  §625(4) (OUID/OWID) OUIL/OWI – Death of Emergency Responder  §625(4)		denial/revocation
1040 (1130)	OUIL/OWI - Injury  §625(5) (OUID/OWID)		denial/revocation
1150	Child Endangerment	(1) (2)	90 susp/90 rest denial/revocation
Commercial Driver License Offenses			
1230	CDL - .04 BAC - Commercial License	(1) (2)	1 yr susp Hazardous Endorsement - 3 yr sup Revocation for 10 yrs
1230	CDL - .04 BAC operator=s license	(1) (2)	90 rest Denial/Revocation
Juvenile Offenses			
1300 1306	Open Intoxicants  §624a	(1) (2) (3)	None 30 susp/60 rest 60 susp/305 rest
1307 1308	Transport/Possess  §624b	(1) (2) (3)	None 30 susp/60 rest 60 susp/305 rest
1330	Fraudulent ID Purchase MCL 436.33b(2)		90 susp
1240	Under 21 BAC  §625(6) Zero Tolerance	(1) (2)	30 rest 90 susp
1360	MIP MCL 436.33b(1)	(1) (2) (3)	None 30 susp/60 rest 60 susp/305 rest
1510	Joyriding MCL 750.414	(1) (2)	90 susp 1 yr susp
Felony Offenses			
1500	UDAA MCL 750.413	(1) (2)	1 yr susp denial/revocation
1706,1707	Fleeing & Eluding MCL 750.179a - 1st and 2nd degree		denial/revocation
1708, 1709	Fleeing & Eluding  §602a  - 3rd and 4th degree		1 yr susp
1450	Felonious Driving MCL 750.191	(1) (2)	1 yr susp denial/revocation

1430	Felony Auto Used	(1) (2)	1 yr susp denial/revocation
1807	Failure to Yield to Emergency Responder Causing Injury �653a(3)		90 susp
1808	Failure to Yield to Emergency Responder Causing Death �653a(4)		denial/revocation
1400	Manslaughter MCL 750.321/91		denial/revocation
1410	Negligent Homicide MCL 750.324		denial/revocation
1420	Murder MCL 750.391		denial/revocation
Other Offenses			
1610	Leaving Scene of Accident Misdemeanor �617a		90 susp
1840	Theft of Vehicle Fuel MCL 750.367c	(1)	90 susp
3250	Unlawful Use of License �324	(1) (2)	90 susp 1 yr susp
1800	Reckless �626	(1) (2)	90 susp denial/revocation
3600	Alter/Forge Documents �257		1 yr susp
3630	Fraudulent Change of Address �319	(1) (2)	180 susp denial/revocation
3320	Perjury to SOS �903 (False Certification)	(1) (2)	90 susp 1 yr susp
1825	Malicious Destruction MCL 750.382(1)(b)(c)(d)		30 susp for damage <200
1830	Malicious Destruction MCL 750.382		90 susp for damage >200
9200	Drug Crime �319c	(1) (2)	court ordered - 30 susp/150 rest court ordered - 60 susp/305 rest

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Preliminary Breath Test (PBT) consequences vary considerably. See the following chart:

### **PRELIMINARY BREATH TEST (PBT)**

MCL	Offense Code	Title	Type	Points	Abstract	FAC/FCJ
257.625a(2)	1310	PBT Refusal in CMV	M	0	Yes	FAC
257.625a(1)	1320	PBT Refusal in Non-CMV	CI	0	No	FCJ
257.625a(2)	1350	Person Under 21 Refused PBT (Operating a Vehicle)	CI	2	Yes	FCJ
436.1703(5)	9300	Person Under 21 Refused PBT (Non-Operating)	State CI	0	No	FCJ
324.80180	9300	PBT Refusal Watercraft	State CI	0	No	FCJ
324.81141	9300	PBT Refusal – ORV	State CI	0	No	FCJ
324.82136	None	PBT Refusal Snowmobile	M	0	No	None

M = Misdemeanor

CI = Civil Infraction (revised 4/2/97)

Chart Updated October, 2004

## **VI. Implied Consent Hearings**

An implied consent matter may arise from an arrest for drunk driving or a related crime pursuant to §625c(1). Very few changes were made to the implied consent law in the repeat offender package. The crime of Child Endangerment, §625(7), was added to §625c and the §625g permit was extended.

Law enforcement officers observe a vehicle committing a civil offense violation and stop the vehicle. A valid traffic stop is required under the implied consent statute. The officer then conducts tests, which may include a preliminary breath test, or PBT, to determine if there are reasonable grounds to believe the person was operating under the influence of liquor or a controlled substance. There are several standards of conduct defined in MCL 257.625 under which persons may not operate a vehicle after consuming alcohol or while under the influence of a controlled substance.

Section 625 encompasses seven crimes: Operating Under the Influence of Liquor/Drugs, Unlawful Bodily Alcohol Content (OUIL/UBAC/OUID), Operating While Impaired (OWI), OUIL Causing Death (OUIL/Death or Death of Emergency Responder), OUIL Causing Serious Injury (OUIL/Injury), Zero Tolerance (Under 21 BAC), Child Endangerment, and .04 Unlawful Bodily Alcohol Content for Commercial Driver License Operators (.04 CDL).



## Section 625

### (1)(a) OUIL/OUID

#### (b) UBAC -

The first of these is the presumptive crime. The second is the per se crime. Both of these crimes use a BAC of a .10 or more in the definition of the crime. Notice that the law now refers to “bodily alcohol content” rather than “blood alcohol level”. Testing is defined in terms of both breath and blood.<sup>11</sup>

(2) A person shall not knowingly permit another person to operate while OUIL/UBAC.

### (3) OWI -

This is defined as a presumptive offense at a BAC greater than .07 and can include a combination of liquor or a controlled substance.

### (4) OUIL Causing Death -

(a) This crime was established in 1991 to provide prosecutors with alternatives to charging manslaughter. This crime was to simplify the proofs required to establish the crime of death resulting from the operation of a motor vehicle. See People v Lardie, 207 Mich App 615;525 NW2d 504 (1995). Upheld in consolidated cases of People v Lardie, and People v Hurdick, 452 Mich 231; 551 NW2d 656 (1996).

(b) In HB 6177, as passed by Senate December 14, 2000, a new crime of OUIL in violation of §653a resulting in the death of an emergency responder was established. Section 653a requires operators to yield the right of way by moving into the far lane or, if no lane is available, to slow down and drive with due care when passing a stationary emergency vehicle. Failure to do so while OUIL or OWI, is a 20-year felony.

### (5) OUIL Causing Serious Injury -

This crime was originally established in 1991. Initially, it was very narrowly defined. In 1994, this definition was expanded considerably.<sup>12</sup>

### (6) Zero Tolerance -

This crime was established in 1994, effective in November, 1995.<sup>13</sup> Officers may arrest persons under the age of 21 for any bodily alcohol content. If the person takes a breath test, the test must register a .02 to .07 for this charge. A BAC above .07 should result in a charge of OUIL/UBAC/OWI.

### (7) Child Endangerment -

This crime was established in 1998, effective October 1, 1999. Persons are guilty of this offense if they commit any §625 crime with a passenger under 16 years of age in the vehicle.

### §625m .04 CDL -

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<sup>11</sup> For example, see §625(1)(b) which states, “The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.” See 1994 PAs 448-450, effective May 1, 1995.

<sup>12</sup> 1994 PAs 448-450.

<sup>13</sup> 1994 PA 211.

A person may not operate a commercial motor vehicle (CMV) with a BAC of a .04 or more. This is a per se crime established by federal mandate. It is a national program to provide a uniform standard for CMV operators who travel nation-wide. The BAC level is low due to the duty of care required to operate large trucks sharing the roads with others.

Reasonable grounds to believe the person was operating under the influence can be determined through observation, field sobriety tests or the preliminary breath test.

The preliminary breath test (PBT) has, since its inception, been admissible when the validity of an arrest is subject to challenge. The PBT is now admissible, for arrests on or after October 1, 1999, “as evidence of the defendant’s breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness, that the defendant’s breath alcohol content was higher at the time of the charged offense than when a chemical test was administered under to subsection (6).” 625a(2)(b)(ii).

Once the officer has reasonable grounds to believe a crime was committed pursuant to 625c(1), the person is placed under arrest.

The officer then advises the person of his or her “chemical test rights”. The rights are contained in 625a(6). A copy of these rights should be submitted at an implied consent hearing before Driver License Appeal Division (DLAD). However, in an unpublished opinion, Gross v Secretary of State, Docket No. 171733, 1995, the Michigan Court of Appeals held that introduction into the record is not necessary in order for the officer to prove that the rights were read.

Defendants are then generally transported to the breathalyzer instrument. The State has purchased and distributed new infrared breathalyzer instruments and these are generally placed at lock-ups for more ready access. These instruments are easier to use than the old Borkensteins and many officers are trained to administer the tests using this instrument. It is not necessary for the breathalyzer operators to appear at DLAD hearings when a “technical refusal”<sup>14</sup> is appealed.

In Midland, Circuit Judge Thomas L. Ludington issued a 23-page opinion holding that breath test results from a BAC Datamaster meet the Frye-Davis test and are admissible in evidence. Other counties are adopting this opinion to avoid the lengthy evidentiary hearing necessary to create this record. See People v Daniel J. Capyak, File No. 95-7566-FH, September 28, 1995.

Since the 1992 legislation became effective, officers now confiscate and destroy driver licenses for a “failure” or “refusal” of a chemical test. This procedure is established in 625g where “failure” is defined. Officers are required to destroy licenses for persons who have a BAC of .10 or above; for CMV operators who reveal a BAC of .04 or more; and for persons under 21 years of age who have a BAC of .02 or more. Officers then give these operators a temporary paper permit which is a valid license until the criminal case is adjudicated. See **Appendix E** for the DI-93 form.

Officers do not destroy out-of-state licenses as Michigan has no jurisdiction over them. However, this information is still entered into the LEIN and the operator’s Michigan privileges may be affected as a result of the adjudication.

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Technical refusals occur when a defendant “attempts” to take the breathalyzer but the test is not completed. These may be considered a “refusal”. Officers should review the Breathalyzer Manual before testifying as defense attorneys sometimes cross-examine officers using the manual.

To implement this procedure, two forms were created; the “Breath, Blood, Urine Test Report”, DI-177 for “failures”, and the “Officers’ Report of Refusal to Submit to Chemical Test”, DI-93 for “refusals”. Officers now submit the “Written Report of Refusal” by LEIN to the Department of State. In addition, officers enter “failure” data to update arrest and infrared databases.

Both the DI-177 and the DI-93 forms include a temporary permit that is valid, for arrests on or after October 1, 1999, until the underlying case is acquitted, dismissed, or a licensing action has been imposed by the agency. The appropriate document is given to the operator. The Chemical Test Rights are included on the back of these permits so that the Department does not have to mail these when a hearing is requested. In addition, the “refusal” form (DI-93) includes the operator’s appeal rights. A second page in this document is entitled, “Request for Hearing”. This too, is given to the operator to facilitate the appeal process.

If a blood or urine test is requested, officers still take licenses and give the permit to the operator but they do not cut-up the license until the test results are returned to the police. Then the officers send page two of the “failure” form to the operator with the test results. If the operator “passes” the test, the license is returned

This information is to be entered into the LEIN, “immediately” so that persons are prohibited from applying for and receiving a photo license at a branch office the next morning. The temporary license or permit provides the operator with the same driving privileges they had at the time of the arrest.

After the person either takes or refuses the test, the case proceeds to court. An acquittal in court does not impact an implied consent suspension or vice versa. These are separate actions imposed by different branches of government for different purposes.

If person appeals a “refusal” report submitted by an officer, a hearing is scheduled to be held at one of 32 DLAD hearing sites. Officers must appear or petitioners prevail automatically. (See the DLAD rules, R 257.301 - 316, **Appendix C**.) Officers have the burden of proof and must testify to four statutory requirements listed in §625f.

If petitioner loses the appeal, his or her driver license is suspended for six months for a first offense and for one year if there is a prior implied consent suspension within seven years. First suspensions are appealable to circuit court in a restoration appeal on merits or hardship. Second suspensions are appealable only on the merits of the record created at the DLAD hearing. See §323 and *Kester v Secretary of State*, 152 Mich App 329; 393 NW2d 623 (1986).

There are separate implied consent statutes for watercraft (1992 PA 301, effective March 31, 1993) and snowmobiles (1994 PA 90, effective May 1, 1994). Separate “refusal” and “failure” forms are available for these offenses. Contact the Department for these documents.

## VII. Habitual Violator License Appeal Procedures

Prior to October 1, 1999, operators who received two convictions of OUIL/UBAC/OUID<sup>15</sup> within seven years or any combination of three convictions of OUIL/UBAC/OUID/OWI<sup>16</sup> within ten years were presumed to be habitual alcohol violators pursuant to §303(1)(f) of the Michigan Vehicle Code, (the Code).<sup>17</sup> After October 1, 1999, new legislation makes any combination of offenses under MCL 257.625 subject to a revocation.<sup>18</sup> MCL 257.320e provides that a person must be sanctioned under the law in effect at the time of arrest. Therefore, an arrest after October 1, 1999 would trigger application of the new law. At that time, the prior convictions on their record would be used for enhancement.

When licenses are revoked/denied it is for a minimum of one year for a first revocation and for a minimum of five years for a subsequent revocation within seven years of a prior revocation. After the minimum period of license revocation the operator may apply for a hearing before the Driver License Appeal Division (DLAD) for relicensure. ***A completed substance abuse evaluation must be submitted before a hearing is scheduled.***<sup>19</sup> A record of this proceeding is made in accordance with §322 of the code for review by the circuit court if the Department's decision is appealed as provided by §323. Section 303 revocation/denials are not subject to the general 14-day appeal period provided in §322(2).

Operators are provided with instructions on how to obtain relicensure several ways: 1) Order of Revocation, 2) three months prior to eligibility for a DLAD hearing they are provided with more detailed instructions including a substance abuse evaluation form that must be completed, 3) these instructions are sent once again, when a request for hearing is received from the petitioner, 4) a tape-recorded message with instructions is also available to ensure that petitioners are prepared for hearings and that hearing time is used wisely. Unprepared petitioners should request the hearing be adjourned rather than fail to appear as they are not eligible for another hearing for up to one year from the date of the scheduled hearing.

The hearing officer shall not order that a license be issued to the petitioner unless the petitioner rebuts the presumption established by §303 of the Code by clear and convincing evidence.<sup>20</sup> In 1997-98, the Kent County Circuit Court issued a series of decisions finding that the Department had promulgated rules which included an incorrect standard of review; i.e., clear and convincing, when the standard should be preponderance of the evidence, and that the Department had the burden of proof in these appeals. This meant that the Department had to show that these operators would continue to drink and drive rather than drivers proving otherwise. The Department has appealed these cases. The Court of Appeals denied leave in Hoebbel v Secretary of State, Kent Circuit Court Docket No. 97-09102-AL, lv app den Court of Appeals Docket No. 208154 (2/13/98) but granted leave in Bunce v Secretary of State, Court of Appeals Docket No. 209122. On December 30 1998, the Supreme Court entered an order (No. 111652)

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<sup>15</sup> Operating Under the Influence of Liquor; Unlawful Bodily Alcohol Content; Operating Under the Influence of Drugs.

<sup>16</sup> Operating Under the Influence of Liquor; Unlawful Bodily Alcohol Content; Operating Under the Influence of Drugs; Operating While Impaired.

<sup>17</sup> 1949 PA 300, as amended.

<sup>18</sup> An exception is that only one MCL 257.625(6) crime may be included in the combination of two. MCL 257.303, 1998 PA 351.

<sup>19</sup> R 257.302(1)(d). See attached.

<sup>20</sup> R 257.313 and MCL 257.303(4).

reversing the Hoebbel decision and remanded the case for appeal but held it in abeyance pending its decision in Bunce, supra. Thereafter, in Bunce v Secretary of State, 239 Mich App 204; 607 NW2d 372 (1999) the Court of Appeals reversed the circuit court and held that the clear and convincing standard was valid and that the petitioner had the burden of proof.

In addition to appealing these cases, the legislature amended MCL 257.303 and 322 to clarify that the standard of review for habitual offenders is “clear and convincing” and that the burden of proof is on petitioners. These amendments are included in the repeat offender legislation, effective October 1, 1999.

Evidence relevant to rebuttal of the prima facie case includes:

That the petitioner's alcohol or substance abuse problems, if any, are under control and likely to remain under control.

That the petitioner represents a low or minimal risk of repeating the act of drunk driving or past abusive behavior.

That the petitioner has the ability and motivation to drive safely and within the law.

The hearing officer shall require that the petitioner prove that he or she has completely abstained from the use of alcohol and controlled substances, except for those controlled substances prescribed by a licensed health care professional, for not less than six consecutive months immediately prior to the hearing, unless the evidence considered at the hearing establishes that a longer period of abstinence, at least a year of sobriety, is necessary. Such evidence requiring a longer period of sobriety includes:

A 0.20 or more BAC on a chemical test.

Three or more convictions of substance abuse-related offenses.

Relapsing after attempting to bring a substance abuse problem under control.

Being diagnosed by a professional as alcohol or controlled substance dependent.

Evidence such as letters and documentation of sobriety, proof of involvement with a treatment program or support program, an alcohol evaluation, etc., are encouraged to assist the hearing officer in making a decision whether to authorize restricted or full driving privileges.

Hearing officers have final decision-making authority in the Department. There is no intra-Departmental appeal, but petitioners may file a Motion for Reconsideration in the event of newly discovered evidence, or a mistake of law or fact.<sup>21</sup>

See **Appendix F** for a copy of the Substance Abuse Evaluation form.

The Department is aware that there is a perception that the agency “never returns a license” in habitual violator appeals. The chart in **Appendix G** shows statistics of DLAD hearing officers where relief has been granted. These statistics are averages and are broken down into two categories: Habitual Offenders and Change or Removal of Restrictions. “Habitual Offenders” are appeals involving persons who have never been granted relief. “Change or Removal of

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<sup>21</sup>

R 257.315.

Restrictions” are appeals by persons who have been granted restricted privileges at a prior DLAD habitual violator hearing, or by the circuit court.

When drivers are approved to return to the road, hearing officers may authorize a restricted license or full privileges. If a restricted license is granted, hearing officers will order a general set of restrictions which include permission to drive to and from residence and place of employment and in the course of employment, to substance abuse treatment program and support group meetings, to regularly scheduled treatment for a serious medical condition, to court probation office and community service and to an educational institution. Operators are required to carry proof of destination and hours with them and to show this to a law enforcement officer, if stopped. Restriction specifics will no longer be carried on the file and will therefore not need updating.

### **Breath Alcohol Ignition Interlock Device, (BAIID)**

The new law requires that if a hearing officer grants a restricted license, it must include a requirement that an ignition interlock be installed in any vehicle the petitioner intends to drive<sup>22</sup>. If this is ordered, these restrictions will also be reflected on the master driving record (MDR), as follows:

“MAY ONLY OPERATE VEHICLE EQUIPPED WITH INTERLOCK DEVICE FOR 1-YEAR FROM DATE OF RESTRICTION. ORIGINAL ACTION REINSTATED FOR VIOLATION.”

Hearing officers will provide petitioners with a list of installers. Before the restricted license will be issued, petitioners must present proof of installation at any branch office. If petitioners intend to drive a company vehicle, notice will be sent to the employer advising them that a device must be installed.

Department administrative rules were updated to include procedures for this process. The rules include a “grandfather” clause. Persons arrested prior to October 1, 1999 are not required to install this device if they are already on a DLAD restricted license. Any DLAD restricted license issued after October 1, 1999, must include an ignition interlock restriction. The restrictions, if granted, are indefinite, but the interlock requirement will automatically expire at the end of one-year unless it is extended for violations. Petitioners must present a final report at the hearing to prove that they had the device installed on their vehicle for at least one year before they will be eligible for additional relief.

Violations of the interlock program are divided into “major” and “minor” violations. Minor violations result in a three-month, BAIID extension making persons ineligible for a hearing at the end of the original one-year requirement. Major violations result in a reinstatement of the revoked/denied status, subject to a hearing.

Major violations include:

1. A rolling retest failure (This is a random test required while driving.)
2. 625g permit issued.
3. 625l convictions (These are crimes for tampering or circumventing the device.)
4. Reports of tampering or attempts to tamper or circumvent without a conviction.
5. Three minor violations within a monitoring period.

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<sup>22</sup>

MCL 257.322 and R 257.313a.

6. Removal of a BAIID except when it is installed in another vehicle owned or operated by the person whose license is restricted.

Minor violations include:

1. Two months after the BAIID is installed, three start-up test failures or lockouts within a monitoring period.
2. Failure to report to the installer for monitoring .

The rules allow hearing officers to give credit for time served if there is a break in the one-year requirement period.

Providers will submit violation reports to the Department. A final report will be prepared by providers and given to the petitioner to take to their DLAD hearing for review. This will be important as hearing officers will be looking for proof that the operator had the BAIID device installed for the minimum year required by statute.

## **VIII. Request For Driver Evaluation**

The department is authorized to reexamine a driver when there is reason to believe the driver may be unable to operate a motor vehicle safely. The department may schedule a driver reexamination for physical infirmities or disabilities, vision deficiencies, convulsive seizures, blackouts, episodes, or for other reasons that may affect the driver's ability to operate safely. Specific information, as descriptive as possible, of an incident or pattern of behavior, or other evidence deemed justifiable for an evaluation must be provided to clearly support scheduling a driver assessment reexamination. See **Appendix H** for a copy of the Request For Driver Evaluation form.

Many of these referrals are submitted by law enforcement, but family members worried about aging seniors also use this service. Reports are carefully evaluated before a reexamination hearing is scheduled. Reports submitted by family members are kept confidential.

## **IX. Relief Available in Circuit Court**

For arrests prior to January 1, 1992, operators could petition directly to the circuit court to seek hardship relief for restricted driving privileges or full restoration. Courts granted relief in approximately 85 percent of the appeals.

The Legislature passed a comprehensive drunk driving reform package in 1991, effective January 1, 1992, limiting appeals to circuit court to a review of the record similar to other administrative appeals under the Michigan Administrative Procedures Act (APA).<sup>23</sup> Pursuant to MCL 257.323(6), habitual alcohol offender license revocations with an alcohol arrest on or after January 1, 1992, could only be set aside by a circuit court if the Departmental action was:

- (a) In violation of the Constitution of the United States, or the State Constitution of 1963, or of a statute.
- (b) In excess of the statutory authority or jurisdiction of the Secretary of State.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by substantial, material, and competent evidence on the whole record.

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1969 PA 306, as amended

- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

The record subject to appeal was the hearing record created pursuant to §322 of the Code. If the operator was ineligible for a Department appeal because the minimum time period of the revocation had not run, then the record subject to review was the driving record created pursuant to §204a of the Code.<sup>24</sup> The review was again, limited to the statutory grounds enumerated above. Therefore the only issues, when reviewing the driving record, were whether the agency revocation action was illegal.

This concept was expanded in the repeat offender reform, effective October 1, 1999. The Legislature limited review to a review of the record or a legal issue as defined above, for all licensing actions in circuit court except for three offenses. These may still be appealed on hardship and include:

- (1) a first implied consent suspension, §625f,
- (2) a Driver Assessment action pursuant to §320, §303(1)g, and §310d, and
- (3) a suspension imposed under §904(10), or (11).<sup>25</sup>

Note that the review of Driver Assessment actions and §904 (10) or (11) actions are limited to suspensions and do not include revocations. Revocations are not appealable to circuit court on hardship or equity. The word “revocation” was deleted from the statute in the clean-up package.<sup>26</sup> Wilson v Secretary of State, Court of Appeals File No. 227444 (2000) unpublished, upholds the statute’s prohibition on circuit court authority to set aside or modify an additional revocation.

No hardship ex parte license is available pending appeal on the record.<sup>27</sup>

Restricted driving privileges are not available from the circuit court. Note §23(4) which provides:

“...the court shall confine its consideration to a review of the record prepared pursuant to §322 or §625f or the driving record created under §204a, for statutory legal issue and shall not grant restricted driving privileges. The court shall set aside the secretary of state’s determination only if the petitioner’s substantial rights have been prejudiced because the determination is any of the following:”. (See the statutory standard of review above.)

The legislative intent was to make offenders "exhaust their administrative remedies" similar to other APA appeals. The court must affirm the action of the agency or grant full license restoration.

Restoration appeals are governed by MCL 257.323. Section 323a addresses ex parte licenses pending appeal; §323b addresses cancellation of a minor’s license upon the request of the person who signed the application on behalf of the minor; and §323c specifies the restricted relief that is available, if authorized pursuant to §323(3), for a first implied consent violation appeal.

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<sup>24</sup> 1991 PA 99 and 100, MCL 257.323(6)

<sup>25</sup> MCL 257.323(3) and (4).

<sup>26</sup> 1999 PA 73, MCL 257.323

<sup>27</sup> MCL 257.323a(2).



Judicial review of an administrative licensing sanction under §303 shall be governed by the law in effect at the time the offense was committed or attempted. If 1 or more of the convictions involved in an administrative licensing sanction is a violation or attempted violation of this act committed or attempted after January 1, 1992, judicial review of that sanction shall be governed by the law in effect after January 1, 1992.<sup>28</sup>

Immobilization, vehicle forfeiture and other criminal sanctions are only appealable to circuit court by appealing the sentence imposed for the criminal conviction.

See the following chart for a summary of the standard of appeal for all types of offenses, before and after October 1, 1999.

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<sup>28</sup>

1999 PA 346, MCL 257.320e(6)

## Appeals to Circuit Court

OFFENSE §257.____	HARDSHIP APPEAL AVAILABILITY PRIOR TO 10/01/99	HARDSHIP APPEAL AVAILABILITY EFFECTIVE 10/01/99	DRIVER LICENSE SANCTION
OUIL/UBAC §625(1)	NO	NO	(1) 30 SUSP/150 REST (2) REVOCATION
OWI §625(3)	NO	NO	(1) 90 REST (2) REVOCATION (3) REVOCATION
OUIL/OWI - DEATH §625(4)	NO	NO	REVOCATION
OUIL/OWI - INJURY §625(5)	NO	NO	REVOCATION
UNDER 21 BAC §625(6) (ZERO TOLERANCE)	NO	NO	(1) 30 REST (2) 90 SUSP
CHILD ENDANGERMENT §625(7)	NO	NO	(1) 90 SUSP/90 REST
OPERATING WITH PRESENCE OF SCHEDULE 1 DRUG/COCAINE §625(8)	NO	NO	30 DAY SUSP/150 DAY RESTRICTED
NEGLIGENT HOMICIDE MCL 750.324	NO	NO	REVOCATION
CDL - .04 BAC §625M	NO	NO	(1) 1 YR SUSP OR 3 YR W/HAZ. (2) REVOCATION - 10 YEARS
DWLS DEATH/INJURY §904 (4) & (5)	NO	NO	REVOCATION
OPEN INTOXICANTS §624A	YES	NO	(1) 0 (2) 30 SUSP/60 REST (3) 60 SUSP/305 REST
FRAUDULENT ID PURCHASE MCL 436.33B(2)	YES	NO	90 SUSP
MIP MCL 436.1703(1)	YES	NO	(1) 0 (2) 30 SUSP/60 REST (3) 60 SUSP/305 REST
TRANSPORT/POSSESS §624B	YES	NO	60 SUSP/305 REST
UNLAWFUL USE LICENSE §324	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
UDAA MCL 750.413	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
JOYRIDING MCL 750.414	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
RECKLESS §626	YES	NO	(1) 90 SUSP
LEAVING SCENE OF CRASH - MISDEMEANOR §617A FELONY §617	YES	NO	MISD: 90 SUSP FELONY: 1 YEAR SUSP
ALTER/FORGE DOCUMENTS §257	YES	NO	1 YEAR SUSP
FRAUDULENT CHANGE OF ADDRESS §315(4)	NA	NO	(1) 180 SUSP (2) REVOCATION
PERJURY TO SOS §903 (FALSE CERTIFICATION)	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
MALICIOUS DESTRUCTION MCL 750.382	YES	NO	90 SUSP
THEFT OF VEHICLE FUEL MCL 750.367C	YES	NO	(1) 180 SUSP (2) 1 YEAR SUSP
FLEEING & ELUDING MCL 750.479A - 1ST AND 2ND DEGREE §602A - 3RD AND 4TH DEGREE	YES YES (AFTER 6 MOS.)	NO NO	REVOCATION 1 YEAR SUSP
FELONIOUS DRIVING MCL 750.191	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
FAILURE TO YIELD TO EMERGENCY RESPONDER/ INJURY §653A(3)	N/A (EFFECTIVE 4/1/01)	NO	90 SUSP
FAILURE TO YIELD TO EMERGENCY RESPONDER/ DEATH §653A(4)	N/A (EFFECTIVE 4/1/01)	NO	REVOCATION
FELONY AUTO USED	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
DRUG CRIMES §319E	NO	NO	STILL COURT ORDERED
DRIVER ASSESSMENT ACTIONS/APPLICATION DENIAL BASED ON MEDICAL CONDITION	YES	YES (NOT REVS)	VARIED
HABITUAL APPEALS FROM DLAD	NO	NO	RELIEF APPEAL AFTER REV TO SOS
CHANGE OR REMOVAL RESTS	NO	NO	RELIEF APPEAL AFTER REV TO SOS
REINSTATEMENTS	NO	NO	RELIEF APPEAL AFTER REV TO SOS
IMPLIED CONSENT	1ST – YES 2ND – NO	1ST – YES 2ND - NO	(1) 1 YEAR (2) 2 YEARS
CONSTRUCTION WORKER – INJURY §601B(2)	NO	NO	(1) 90 SUSP (2) REVOCATION
CONSTRUCTION WORKER – DEATH §601B(3)	NO	NO	REVOCATION
IMPLEMENT OF HUSBANDRY – INJURY §601C(1)	NO	NO	(1) 90 SUSP (2) REVOCATION
IMPLEMENT OF HUSBANDRY – DEATH §601C(2)	NO	NO	REVOCATION
MANDATORY ADDITIONALS	YES	YES (NOT REVS)	VARIED

## **X. Restoration Appeal Process**

See the chart in **Appendix I** for a diagram of the habitual alcohol offender restoration appeal process for arrests after January 1, 1992.

### **Venue and Time Limits:**

A person may file a petition with the circuit court for relief from a final determination by the Secretary of State in his or her county of residence except for implied consent appeals which must be filed in the county where the arrest occurred. Petitions must be filed in Lansing within 63 days after the final determination is made except that for good cause shown the court may allow filing a petition within 182 days.<sup>29</sup> The Secretary of State must be notified not less than 20 days before the hearing. If there is a review of the record, 50 days notice must be provided to the Department so that a transcript may be prepared.<sup>30</sup>

A peace officer, with the consent of the prosecuting attorney, may appeal a determination of a hearing officer from an implied consent hearing.<sup>31</sup>

Each petition shall include the person's full name, current address, birth date, and driver license number. The order setting the hearing, the petition, and all supporting affidavits shall be filed in the Secretary of State's office located at 208 N. Capitol, P.O. Box 30196, Lansing, MI 48909-7696.

### **Requests for Transcripts:**

A request for a transcript of a DLAD hearing should be sent to:

Michigan Department of State  
Driver License Appeal Division  
Attn: Transcription Unit  
P.O. Box 30196  
Lansing, MI 48909-7696

### **Service of Final Order:**

When a final court order is issued, the Petitioner must serve a copy on the Secretary of State within seven days of entry.<sup>32</sup> Prosecutors are required to serve the agency within seven days in order to receive reimbursement for representing the Department. (Even with these requirements there is a problem with receiving copies of all final orders. Without a copy of the order the Department cannot post this information to the driving record or send out an Authorization for Licensure.)

Serve these orders *within seven (7) days* on the Driver License Appeal Division at the address above or by fax 517/335-4706 or 517/241-1376 .

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<sup>29</sup> Roberts v Secretary of State, unpublished Court of Appeals Docket No. 205616 (1999) unpublished.

<sup>30</sup> MCL 257.323(1)

<sup>31</sup> MCL 257.323(1), MCL 257.625f(8)

<sup>32</sup> MCL 257.323(3)

## **State Court Administrator's Form Orders:**

The State Court Administrator's Office provides form orders for restoration appeals. If these form orders are used, mistakes can be minimized. The forms were updated June 1, 2000. See **Appendix J** for samples. In addition, see the agency forms for court-ordered plate transfer.

## **Request to Take Action Form:**

Either the local prosecuting attorney or the Attorney General represents the Secretary of State on a restoration appeal, depending on the location. For each appeal, the Department sends the prosecuting attorney or the Attorney General a case file that includes a certified driving record and other necessary documents for the hearing.

If there are jurisdictional issues in a case, a Request to Take Action form is included with the file. See **Appendix K** for copies of these documents. The DLAD clerical staff analyzes each case and will check-off issues pertaining to the particular case. Prosecutors should read the substance of these paragraphs into the record to ensure that the agency's right to appeal these issues is preserved. Prosecutors should be able to answer whether the court has authority to grant relief. Petitioners should not seek relief that is not authorized.

Clerical staff compile these documents. They are not attorneys. Consequently, attorneys should independently review the entire case file.

## **Remands from Circuit Court**

Persons who accumulate several licensing actions sometimes drive when their license is suspended or revoked. Any conviction or finding of responsibility during this period of time will result in a mandatory additional licensing action added on to the end of the original action.<sup>33</sup> Mandatory additional licensing actions after October 1, 1999 will run concurrently.

For mandatory additional suspensions/revocations imposed prior to October 1, 1999, the court has jurisdiction to grant restrictions or to set aside a mandatory additional actions imposed pursuant to MCL 257.904. However, if the underlying reason for the revocation/denial is because of a §303 action, the court may terminate the §904 licensing action and then, if relief is granted from that action, remand the matter to the Department to conduct a hearing on the §303 revocation/denial. (If there is an arrest for drunk driving on or after January 1, 1992 and if the minimum period of the revocation/denial has not expired, neither DLAD nor the court may grant relief. In such a case, the petition must be denied and a remand to DLAD would not be appropriate.)

After October 1, 1999, mandatory revocations will not be appealable to circuit court on hardship, nor will the underlying action. Therefore, remands are not appropriate for mandatory additional revocations imposed after October 1, 1999.

## **XI. Key Restoration Appeal Cases**

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<sup>33</sup>

MCL 257.904(2)

### **Implied Consent:**

**Kester v Secretary of State**, 152 Mich App 329; 393 NW2d 623 (1986).

Petitioner's license was suspended for one year for a second implied consent suspension. She petitioned the circuit court for restricted driving privileges and her petition was granted. Respondent appealed and the Court of Appeals reversed, noting that the circuit court lacked jurisdiction to grant restrictions on a second implied consent suspension. The standard of review by the circuit court is whether the decision of the hearing officer was supported by substantial, material, and competent evidence on the whole record.

**McMillan v Secretary of State**, 155 Mich App 399; 399 NW2d 538 (1986).

Petitioner failed to appear at the second implied consent suspension hearing before DLAD and his license was suspended for one year. Petitioner appealed to the circuit court and was granted a restricted license. Respondent appealed. The Court of Appeals held petitioner's failure to appear resulted in a default judgment not subject to de novo review by the circuit court, and that restricted driving privileges could not be granted.

### **Trial Court Licensing Sanctions and Administrative Actions:**

**Paulson v Secretary of State**, 154 Mich App 626; 398 NW2d 477 (1986).

Petitioner received a fourth OUIL conviction and his license was ordered suspended for two years. (The Court of Appeals noted that the Petitioner's license should have been revoked.) Petitioner sought restricted driving privileges in circuit court, and his petition was granted. Respondent appealed. The Court of Appeals reversed, noting that the circuit court lacked jurisdiction to set aside a driver licensing sanction issued as a part of a sentence for a drunk driving conviction pursuant to §323.

**Dabrowski v Secretary of State, Nigro v Secretary of State**, 201 Mich App 218; 506 NW2d 10 (1993).

The licenses of Dabrowski and Nigro were revoked following convictions for OUIL, third offense. They petitioned the circuit court for a restricted license within five years of their conviction. Both were granted restricted licenses. The respondent appealed. The cases were consolidated for hearing an appeal.

The Court of Appeals held that where the trial court was required to impose a license revocation as part of a sentence for OUIL, third offense, and where the conviction occurred within ten years of the prior convictions, the Secretary of State could not issue a license to the person. Accordingly, circuit courts lack authority to grant restricted licenses by amending sentences.

**Dudley v Secretary of State**, 204 Mich App 152; 514 NW2d 167 (1993).

Dudley's license was revoked for an OUIL, third offense conviction. This was a second revocation of his license within seven years of a prior revocation, and the Secretary of State would not allow him to apply for relicensure for a minimum of five years. The circuit court ordered restricted driving privileges and respondent appealed.

The Court of Appeals held the circuit court did not have jurisdiction to modify the driver license revocation where it was imposed as part of a sentence for drunk driving. The abstract of conviction did not state a minimum time period before Dudley could reapply for a license;

however, the respondent was mandated to revoke Dudley's license for not less than five years, which was upheld by the Court of Appeals.

**Matheson v Secretary of State**, 170 Mich App 216; 428 NW2d 31 (1988); lv den 432 Mich 879 (March 7, 1989).

The court upheld a license revocation under §303 even though a prior conviction for OUIL was found to be constitutionally invalid because Matheson was not represented by counsel. The court recognized that the §303 sanction was not “punishment”, and that it was for the protection of the public and administrative in nature. Attorneys will argue that this case is pre-1992; however, please note that when “constitutionally invalid” language was added to §625b for the trial courts, it was not added to §303 for the Department. Moreover, if the Legislature had intended that the Department could no longer use such convictions, it would have added the “constitutionally invalid” language to §303.

**Broadwell v Secretary of State**, 213 Mich App 306; 539 NW2d 585 (1995), lv den 453 Mich (adv) 899 (October 1, 1996).

The court upheld ***Matheson, supra***. A trial court determined a prior OUIL conviction was “constitutionally infirm”. The Secretary of State revoked/denied the license using this conviction. The plaintiff appealed and stay was denied. This court affirmed the Secretary’s use of the prior conviction.

The court also rejected the plaintiff’s claim that the agency was bound by the district court’s ruling under the doctrines of res judicata or collateral estoppel.

**Rodgers v Secretary of State**, 159 Mich App 808; 407 NW2d 80 (1987).

Rodgers was convicted of OUIL twice within seven years. The district court ordered a license revocation. The Secretary of State revoked the license, and Rodgers was ineligible to apply for a license for five years. On appeal, the circuit court ordered restricted driving privileges. The Court of Appeals reversed, and held that the Secretary of State was required to revoke Rodgers' license and could not allow Rodgers to reapply for a license for a minimum of five years as this was a second revocation within seven years of a prior revocation.

### **Habitual Alcohol Offender Appeals:**

**Bunce v Secretary of State**, 239 Mich App 204; 607 NW2d 372 (1999).

The petitioner’s license was revoked and denied under the habitual offender provisions of §303. He was denied relief before DLAD and appealed to the circuit court. The circuit court granted restricted privileges holding that the department had the burden of proof and had also applied the wrong of standard of proof. The Court of Appeals held that, in accordance with Rule 13, an individual who files a petition for reinstatement of driving privileges has the burden to prove by clear and convincing evidence that he is entitled to reinstatement of his driver’s license. Accordingly, they reversed the trial court’s remand order. See **Appendix L** for decision.

**Rodriguez v Secretary of State**, 215 Mich App 481; 546 NW2d 661 (1996).

The court held the plaintiff could only appeal the Secretary of State decision to circuit court two ways: first, it can only set aside a hearing office decision; it cannot be modified, and second, a hearing officer decision can only be set aside if one of the statutory criteria is satisfied. No restricted license may be granted. The hearing officer’s decision was supported by substantial, material, and competent evidence on the record. See **Appendix L** for decision.

**Roman v Secretary of State**, 213 Mich App 592; 540 NW2d 474 (1995).

Where there is no evidence on the record that the circuit court had a copy of the DLAD hearing record, the court erred by reviewing the DLAD decision and by issuing plaintiff a restricted driver's license. Review must be conducted pursuant to 323(6).

**Roberts v Secretary of State**, Court of Appeals File No. 205616 (1999) unpublished.

A petition to circuit court must be filed within 63 to 182 days from the agency's decision or the court lacks jurisdiction to review the matter. In addition, the court cited **Rodriguez, supra** noting that the circuit court authority to review the revocation imposed by the agency is limited and that no restricted privileges may be ordered by the court.

**Berch v Secretary of State**, Court of Appeals File No. 204230 (1999) unpublished.

The circuit court set aside the hearing officer's decision in an habitual offender appeal, finding that it was arbitrary and capricious. The court found that the hearing officer determined that attendance at AA meetings was the only appropriate method of treating an alcohol problem. The Court of Appeals found that the lower court "grossly misapplied the substantial evidence test to the agency's factual findings." The latter standard is indistinguishable from the clearly erroneous standard of review. **Boyd v Civil Service Comm**, 220 Mich App 226, 234-235; 559 NW2d 342 (1996). A circuit court has only limited power to review a decision resulting in a denial or revocation of a license.

The decision that the petitioner had not rebutted the statutory presumption because he had not demonstrated that his alcoholism had been brought under control by participation in an established recovery program was not arbitrary and capricious. The issue was the efficacy of AA versus a less well-known program. The hearing officer's decision was supported by the facts in the record and "the circuit court clearly erred by setting aside that decision."

### **Hardship Appeals:**

**Wilson v Secretary of State**, Court of Appeals File No. 227444 (2000) unpublished.

The Court of Appeals held that the circuit court does not have authority to set aside or modify the additional revocation of an operators' license imposed under MCL 257.904.

### **Commercial Driver License:**

**Taylor v Secretary of State**, 216 Mich App 333; 548 NW2d 710 (1996).

The court reversed the circuit court's decision granting petitioner a CDL over a denial issued pursuant to 312f. Section 323(8) limits circuit court review and petitioner argued this was not applicable because the suspension was accrued prior to enactment of 323(8). The court held this was a "protection of the public" issue and that it was not applied *ex post facto* or states would never be able to change laws until after "the death of every living person at the time of enactment."

**Bennett v Secretary of State**, unpublished Court of Appeals Docket No. 179719 (1995).

The Department denied Bennett a commercial driver license (CDL) pursuant to 312f and the circuit court ordered the agency to accept his application. In lieu of granting leave to appeal, the Court of Appeals entered a peremptory order reversing the circuit court holding that the court

lacked jurisdiction to review the agency decision and had no equity powers to order CDL licensure.

## **XII. Out-of-State Licensing Issues**

The Secretary of State is prohibited from issuing a license to a non-resident.<sup>34</sup> Many licensing matters involve non-residents. Michigan and other states exchange conviction information and Michigan may impose a licensing action on a Michigan driver for convictions acquired out of state.

Out of state convictions are put on Michigan records if they are substantially corresponding to Michigan law or if the offense, had it been committed in Michigan, would have resulted in a licensing action here<sup>35</sup>. Michigan operators who travel through other states and acquire convictions often have to serve these sanctions as they did not actually serve the licensing action in the other state. If the operator can prove that he or she received an equal or greater licensing action and that they resided in that state for period of the licensing action DLAD may be able to waive all or portions of the suspension/revocation/restriction. Appeal hearings must be requested within 14-days of the Order of Action.

In instances when restrictions are authorized, they will be generated automatically to the operator regardless of whether the conviction is from Michigan or another jurisdiction<sup>36</sup>. No appeal is necessary to obtain these restrictions. If restricted privileges are not authorized by law, hearing officers cannot grant restrictions through the appeal process.

If persons move to Michigan with out of state convictions, and the home state shows their licensing status to be clear in that state, Michigan will license them here.

A non-resident may have once been a Michigan resident and lost his or her Michigan license due to multiple drunk driving convictions. The person's new state of residence may choose not to grant licensure until Michigan reports there is no licensing action pending against the individual's license in Michigan.

If the person is eligible for a hearing, an administrative review may be conducted to determine if the person satisfies the standards for issuance of a license in Michigan. The results of this review can then be forwarded to the person's new state of residence. Most states require restoration of full privileges before licensure. However, Michigan will not return a license to an unsafe driver just so that person can obtain an out-of-state license. Other states look to Michigan for guidance because they too, want to license only safe drivers.

The operator may have an appeal in his or her state of residence for relief from the denial of a license application in that state. Attorneys should review the laws of the state of residence.

Vehicle operators from most foreign countries are not required to obtain a Michigan driver license when visiting temporarily because their privileges fall under international conventions and treaties. In addition, some countries have special agreements with Michigan regarding

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<sup>34</sup> MCL 257.303(1)(m)

<sup>35</sup> MCL 257.318, MCL 257.303, MCL 257.319, Johnson v Secretary of State, 224 Mich App 158;568 NW 2d 373 (1997).

<sup>36</sup> MCL 257.319 (11).



reciprocal driving privileges.<sup>37</sup> Should you wish a list of counties included in the 1949 United Nations Convention on Road Traffic, please contact the department.<sup>38</sup>

See **Appendix M** for international reciprocity information.

### **XIII. Commercial Driver License (CDL) and Snowmobiles and Watercraft**

Persons who operate commercial motor vehicles (CMVs) must hold a CDL. Legislation was passed pursuant to a federal mandate so that commercial motor vehicle operators could not obtain driver licenses from several states. CMV operators are held to a higher standard of care due to the nature of their driving responsibilities.

To obtain a CDL, an operator may not have had a license suspension or revocation within 36 months of application, or a 6 point offense in any vehicle within 24 months of application pursuant to MCL 257.312f. In addition, CMV operators may have their CDLs suspended or revoked for unsafe driving in a commercial motor vehicle pursuant to 319b. There is no hardship appeal to DLAD nor is there a hardship appeal to circuit court, 323(4).

The CDL is dependent upon the operator license. If the underlying operator license is suspended, so is the CDL. However, the CDL may be suspended without affecting the operator license. CDL actions apply only to the CDL but cumulative points may also result in an operator licensing action.

Drunk operation laws are included in the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, for watercraft, MCL 324.80101 - 80199; snowmobiles, MCL 324.82101- 82159; and ORVs, MCL 324.81101 - 81150. Operation privileges are sanctioned rather than licenses as no license is necessary to operate these vehicles.

1999 PA 21, effective October 1, 2000 amended the snowmobile and ORV laws to require drunk operation offenses to appear on the master driving record and to carry points. These points may cause a person to be cited into the agency under 320 for accumulating 12 or more points within a two-year period. Snowmobile and ORV operation violations may be considered in conjunction with motor vehicle operation violations and result in driver licensing sanctions imposed under that section.

Even though these offenses appear on the driving record, mandatory driver licensing sanctions are not imposed under 319 and 303.

See **Appendix N** for a detailed list of offenses, CDL, snowmobile, and watercraft sanctions, and a summary of the new legislation.

### **XIV. Offense Codes**

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<sup>37</sup> 1990 PA 181; MCL 257.302a

<sup>38</sup> Information regarding signatory countries may also be obtained from the American Automobile Association.

See **Appendix O** for a complete list of offenses, their statutory citations, what points they carry, and other related information.

## **XV. New Legislation Re: Emergency Responder Death/Injury**

January 3, 2001

Prepared by: Elaine Charney, Director  
Bureau of Driver Safety

### **HB 5549**

MCL 257.653a -- Establishes New Crime

- (1) Establishes a new crime that requires operators approaching and passing a stationary authorized emergency vehicle to exhibit due care and caution as follows:
  - (a) On public roads with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the emergency. **(Failure to Yield to Emergency Responder)**
  - (b) On public roads without 2 adjacent lanes or if movement is not possible, reduce and maintain a safe speed for weather, road conditions, or traffic and proceed with due care. **(Failure to Use Due Caution for Emergency Responder)**
- (2) These are misdemeanors, punishable by a fine of not more than \$500 or imprisonment for not more than 90 days, or both.
- (3) Causing injury to emergency responder in violation of this section is a felony punishable by a fine of not more than \$1,000 or imprisonment for not more than 2 years, or both. **(Failure to Yield for Emergency Responder Causing Injury)**
- (4) Causing death to emergency responder in violation of this section is a felony punishable by a fine of not more than \$7,500 or imprisonment for not more than 15 years, or both. **(Failure to Yield for Emergency Responder Causing Death)**

Effective April 1, 2001

### **HB 6177**

MCL 257.303 – Revocation/Denial Section

- (1) Deny license for:
  - (d) A violation of  $\S$ 653a(4)
  - (f) Any combination of two crimes for habitual offenders now includes  $\S$ 653a(4). Any combination of three crimes for habitual offenders now includes  $\S$ 653a(4).
  - (i) Any combination of two  $\S$ 653a(3) and  $\S$ 626 (Reckless) crimes w/i 7 years.
- (2) Revoke license for:
  - (a) Any combination of two  $\S$ 653a(3) and  $\S$ 626 (Reckless) crimes w/i 7 years.
  - (c) Any combination of two alcohol crimes including  $\S$ 653a(4) w/i 7 yrs.
  - (d) A single  $\S$ 653a(4) conviction. [Includes  $\S$ 625(4) which incorporates new  $\S$ 625(4)(b)]
  - (e) Any combination of three alcohol crimes including  $\S$ 653a(4) w/i 10 yrs.

MCL 257.319 – Mandatory Suspension Section

- (3) (b) Suspend for 90-days for  $\S$ 653a(3) conviction.

MCL 257.320a – Points Section

- (1) The Secretary of State shall record points for each conviction.
  - (b)  $\S$ 653a(4) carries 6 points on the MDR.
  - (f)  $\S$ 653a(3) carries 6 points on the MDR.

- (j) 653a(2) carries 4 points on the MDR.

MCL 257.625 – Drunk Driving Section

- (4) A person who operates a vehicle while intoxicated or under the influence of liquor and causes the death of another person is guilty of a crime as follows:
- (a) OUIL Causing a Death is a felony punishable by imprisonment for not more than 15-yr or a fine of not less than \$2,500 or more than \$10,000, or both.
  - (b) OUIL Causing a Death of an Emergency Responder in violation of 653a is a felony punishable by imprisonment for not more than 20 yrs or a fine of not less than \$2,500 or more than \$10,000, or both.
- (23) “Prior conviction” includes 653a(4).

MCL 257.625m – CDL .04 Crime

- (7) “Prior conviction” includes 653a(4).

MCL 257.732 – Abstract Requirement Section

- (c) Requires abstracting for 653a(4). Editorial: This is unnecessary as Vehicle Code crimes are submitted under (1) of this Section. Otherwise, why not include 653a(2) or (3)?

MCL 257.904d – Immobilization Section

- (8) “Prior conviction” includes 653a(3) for purposes of immobilization. Editorial: Why as is not alcohol related? Why as a “prior” and yet not for the offense itself? Why not include 653a(4) too? For purposes of DWLS, this definition is for immobilization only, not for other criminal penalties as it is not in 904.

Effective April 1, 2001

## **XVI. Master Driving Record**

Records may be purchased for \$7.00 and certified records may be purchased for \$8.00. Request a "7-year record" if you are seeking information older than 5 years. Standard records contain information only dating back 5 years. In addition, specify if you wish to obtain an "edited" or "unedited" record. Edited records are prepared in compliance with MCL 257.733 and do not show crashes for which no conviction is associated.

To obtain a driving record, contact:

Michigan Department of State  
Record Lookup Unit  
7064 Crowner Drive  
Lansing MI 48918-1540

See **Appendix P** for information on how to read a master driving record, what types of driving records are available, codes that appear on driving records, etc.

## **XVII. Youth Offenses**

See **Appendix Q** for chart that describes consequences for all offenses related to minors.

## **XVIII. Reinstatement Fees**

See **Appendix R** for Reinstatement Fees Chart.

## **XVIV. Drunk Driving Audit**

See **Appendix S** for Michigan State Police statewide arrest data for 1999.

Prepared By:

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